

<p>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK</p> <p>-----X</p> <p>ESTEBAN PEREZ, FELIPE GALINDO, and DELFINO LOPEZ, Plaintiffs,</p> <p>-against- Case No. 1:17-cv-07837 (RJS)</p> <p>50 FOOD CORP. (D/B/A SILO CAFE) and ANDREW SUNG (A.K.A. HWAN SEUNG SUNG), Defendants.</p> <p>-----X</p> <p>89-00 Sutphin Boulevard Jamaica, New York May 29, 2018 9:56 a.m.</p> <p>EXAMINATION BEFORE TRIAL of ANDREW H. SUNG, a Defendant herein, taken by the attorneys for the Plaintiffs pursuant to Court Order, held at the above time and place before Chaya Ezagui, a Stenotype Reporter and Notary Public within and for the State of New York.</p> <p style="text-align: right;">1</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>FEDERAL STIPULATIONS</p> <p>IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, through their respective Counsel, that the certification, sealing and filing of the within examination will be and the same are hereby waived;</p> <p>IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, will be reserved to the time of the trial;</p> <p>IT IS FURTHER STIPULATED AND AGREED that the within examination may be signed before any Notary Public with the same force and effect as if signed and sworn to before this Court.</p> <p style="text-align: right;">3</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>APPEARANCES:</p> <p>CATHOLIC MIGRATION SERVICES Attorneys for the Plaintiffs 47-01 Queens Boulevard, Suite 201 Sunnyside, New York 11104</p> <p>BY: MAGDALENA BARBOSA, ESQ. MICHELLE VASQUEZ</p> <p>VARACALLI & HAMRA, LLP Attorneys for the Defendants 32 Broadway, Suite 1818 New York, New York 10004</p> <p>BY: DOUGLAS VARACALLI, ESQ.</p> <p style="text-align: right;">2</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>ANDREW H. SUNG, the witness herein, having first been duly sworn by Chaya Ezagui, a Notary Public in and for the State of New York, was examined and testified as follows:</p> <p>EXAMINATION BY MAGDALENA BARBOSA, ESQ.:</p> <p>Q. What is your name, please?</p> <p>A. Andrew H. Sung.</p> <p>Q. Where do you currently reside?</p> <p>A. 112 West 112th Street, New York, New York</p> <p>Q. Good morning, Mr. Sung.</p> <p>A. Good morning.</p> <p>Q. So as you can see the deposition is being recorded by a court reporter. She can only record verbal responses, so I'm just going to ask you to be mindful to give verbal responses to my questions today. So could you tell me, have you ever been deposed before?</p> <p>A. No, first time.</p> <p>Q. This is your first time, okay. Have you ever testified before in a court proceeding?</p> <p>A. No.</p> <p>Q. Besides this lawsuit, have you ever participated in a lawsuit before as either a</p> <p style="text-align: right;">4</p>

<p>1 A. H. SUNG</p> <p>2 plaintiff or a defendant?</p> <p>3 A. No.</p> <p>4 Q. I should also just say, you know, if you</p> <p>5 don't understand any of my questions, please let</p> <p>6 me know and I'll try to rephrase it. Also, if</p> <p>7 you need to take a break, let me know and we'll</p> <p>8 happily take a break for a few minutes. Do you</p> <p>9 understand that today you should be answering</p> <p>10 truthfully, that you're under oath?</p> <p>11 A. Yes.</p> <p>12 Q. Yes. Is there anything that prevents</p> <p>13 you from testifying truthfully today? For</p> <p>14 example, are you under any type of medication --</p> <p>15 A. No.</p> <p>16 Q. -- that might --</p> <p>17 A. I'm fine.</p> <p>18 Q. Okay, very good. Let's see. Before we</p> <p>19 get started, do you have any questions for me?</p> <p>20 A. No.</p> <p>21 Q. Could you tell me what you did, if</p> <p>22 anything, to prepare for today's deposition?</p> <p>23 A. No, I just came.</p> <p>24 Q. Did you have the opportunity to review</p> <p>25 any documents?</p> <p style="text-align: right;">5</p>	<p>1 A. H. SUNG</p> <p>2 A. Yeah.</p> <p>3 Q. Can you tell me what your date of birth</p> <p>4 is?</p> <p>5 A. October 4, 1956.</p> <p>6 Q. Where were you born, Mr. Sung?</p> <p>7 A. South Korea.</p> <p>8 Q. How long have you been in the United</p> <p>9 States?</p> <p>10 A. I think it's about 36 years now almost.</p> <p>11 Almost 36 years.</p> <p>12 Q. Have you lived in the United States</p> <p>13 since --</p> <p>14 A. Yeah.</p> <p>15 Q. Okay, very good. Can you tell me a</p> <p>16 little bit about your educational background?</p> <p>17 A. I graduated college in Seoul.</p> <p>18 Q. In Seoul?</p> <p>19 A. Yeah.</p> <p>20 Q. Besides college, did you receive any</p> <p>21 higher education besides college in Seoul?</p> <p>22 A. No, just college.</p> <p>23 Q. Have you ever been arrested either here</p> <p>24 in the United States or elsewhere?</p> <p>25 A. No.</p> <p style="text-align: right;">7</p>
<p>1 A. H. SUNG</p> <p>2 A. Any documents?</p> <p>3 Q. Related to this lawsuit.</p> <p>4 A. I just saw this. This is, you know,</p> <p>5 just timesheet.</p> <p>6 Q. Just timesheets, okay. Did you have,</p> <p>7 without telling me what you discussed, did you</p> <p>8 have the opportunity to have a conversation with</p> <p>9 your lawyer, Mr. Varacalli, before this</p> <p>10 deposition?</p> <p>11 A. No, we just came up here.</p> <p>12 Q. Okay, very good. Have you ever gone by</p> <p>13 any other names besides Andrew Sung?</p> <p>14 A. Before I got the citizenship, my name</p> <p>15 was Hwan Sung, that's Korean.</p> <p>16 Q. Can you spell that for me?</p> <p>17 A. H-W-A-N S-U-N-G.</p> <p>18 Q. Do you go by Andrew Sung --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- at 50 Food Corp. and your other</p> <p>21 businesses?</p> <p>22 A. I got another one in 30 -- Silo Cafe</p> <p>23 Corp. in 32nd Street.</p> <p>24 Q. In both businesses, are you known by the</p> <p>25 staff members as Andrew Sung?</p> <p style="text-align: right;">6</p>	<p>1 A. H. SUNG</p> <p>2 Q. When you arrived to the United States,</p> <p>3 what type of work were you involved in?</p> <p>4 A. My first job, I was working at wholesale</p> <p>5 merchandise shop in New York City.</p> <p>6 Q. Okay.</p> <p>7 A. That was first job.</p> <p>8 Q. What did you do there?</p> <p>9 A. Just like floor salesperson.</p> <p>10 Q. Okay.</p> <p>11 A. Yeah.</p> <p>12 Q. How long did you do that type of work</p> <p>13 for?</p> <p>14 A. That's about six months.</p> <p>15 Q. What did you do afterwards?</p> <p>16 A. After that, I start with landscape</p> <p>17 business.</p> <p>18 Q. Okay.</p> <p>19 A. You know, with my brothers and family.</p> <p>20 Q. How long did you --</p> <p>21 A. It is about --</p> <p>22 Q. -- were involved in that business?</p> <p>23 A. -- about 25 years.</p> <p>24 Q. Were you the owner of that business?</p> <p>25 A. Yeah, with my brothers, co-owners, yeah.</p> <p style="text-align: right;">8</p>

<p>1 A. H. SUNG</p> <p>2 Q. With one brother or?</p> <p>3 A. I have three brothers.</p> <p>4 Q. With three brothers?</p> <p>5 A. Yeah.</p> <p>6 Q. What was the name of that business?</p> <p>7 A. W-O-O-I-L, Landscaping Inc.</p> <p>8 Q. Did you say, W-O-I-L?</p> <p>9 A. W-O-O-I-L.</p> <p>10 Q. W-O-O-I-L.</p> <p>11 A. Yeah.</p> <p>12 Q. Is that business still in operation --</p> <p>13 A. No.</p> <p>14 Q. -- right now?</p> <p>15 A. No, it closed about ten years ago. More</p> <p>16 than ten years ago.</p> <p>17 Q. How many employees did you have?</p> <p>18 A. There's about sometimes ten, sometimes</p> <p>19 five. It's all different.</p> <p>20 Q. When did that business dissolve?</p> <p>21 A. Which means?</p> <p>22 Q. When did it stop?</p> <p>23 A. Oh, when did it stop. I think it's</p> <p>24 about 2002.</p> <p>25 Q. 2002?</p> <p style="text-align: right;">9</p>	<p>1 A. H. SUNG</p> <p>2 the employees would be?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Was that business located here in New</p> <p>5 York State?</p> <p>6 A. Yes, in Long Island.</p> <p>7 Q. In Long Island, okay. So it sounds like</p> <p>8 you were involved in that business for several</p> <p>9 years, right?</p> <p>10 A. Yeah.</p> <p>11 Q. Were you involved in any other</p> <p>12 businesses --</p> <p>13 A. No.</p> <p>14 Q. -- while -- no? So you were just</p> <p>15 involved in that business?</p> <p>16 A. Yes.</p> <p>17 Q. Can you remind me again how many years</p> <p>18 that was?</p> <p>19 A. Almost about 20 years.</p> <p>20 Q. Told me it dissolved in two thousand --</p> <p>21 A. 2002. I don't remember exact year now,</p> <p>22 but more than ten years ago.</p> <p>23 Q. So when the company dissolved in 2002,</p> <p>24 what did you do? Were you involved in another</p> <p>25 business?</p> <p style="text-align: right;">11</p>
<p>1 A. H. SUNG</p> <p>2 A. Yeah.</p> <p>3 Q. What was your primary responsibility in</p> <p>4 that business?</p> <p>5 A. I'm working as a landscape architect.</p> <p>6 Q. Oh, okay.</p> <p>7 A. At the business, you know, yeah.</p> <p>8 Q. Do you have a background in landscape</p> <p>9 architecture?</p> <p>10 A. The landscape business, my family begins</p> <p>11 in Korea.</p> <p>12 Q. Oh, okay.</p> <p>13 A. So I learn from the child about the</p> <p>14 business.</p> <p>15 Q. Were you in charge at all regarding any</p> <p>16 human resources, in managing the company</p> <p>17 employees?</p> <p>18 A. Yes.</p> <p>19 Q. Were you involved in the payroll?</p> <p>20 A. I know how much we pay, but I have a</p> <p>21 bookkeeper, she handled that.</p> <p>22 Q. Were you in charge of hiring the</p> <p>23 employees?</p> <p>24 A. Yeah, yeah.</p> <p>25 Q. Did you determine what the pay rates of</p> <p style="text-align: right;">10</p>	<p>1 A. H. SUNG</p> <p>2 A. After that, I just worked for my</p> <p>3 brothers for something, but sometimes I don't</p> <p>4 work few years, you know.</p> <p>5 Q. Okay.</p> <p>6 A. Yeah.</p> <p>7 Q. So besides 50 Food Corp., the Silo Cafe</p> <p>8 that is the focus of this litigation, have you</p> <p>9 owned any other businesses?</p> <p>10 A. Previously?</p> <p>11 Q. Yes.</p> <p>12 A. I do some -- I did own some bookstore</p> <p>13 couple, about three years.</p> <p>14 Q. Three years ago you owned a bookstore?</p> <p>15 A. No, no, not three years ago.</p> <p>16 Q. Oh.</p> <p>17 A. After I closed the landscaping business,</p> <p>18 I start some the bookstore business.</p> <p>19 Q. Okay.</p> <p>20 A. That is about three to five years.</p> <p>21 Q. Where was this bookstore?</p> <p>22 A. That is Long Island.</p> <p>23 Q. In Long Island. What is the bookstore</p> <p>24 called?</p> <p>25 A. That is some discount bookstore. It's</p> <p style="text-align: right;">12</p>

<p>1 A. H. SUNG</p> <p>2 the Book Club Outlet.</p> <p>3 Q. Okay. So it's not a store, it's not a</p> <p>4 storefront?</p> <p>5 A. No, it's a store.</p> <p>6 Q. Where was the store located?</p> <p>7 A. Long Island.</p> <p>8 Q. Okay, Long Island. Where in Long</p> <p>9 Island?</p> <p>10 A. Carle Place.</p> <p>11 Q. Carle Place. What was the name of the</p> <p>12 business?</p> <p>13 A. Book Club Outlet.</p> <p>14 Q. Oh, Book Club Outlet. Got it.</p> <p>15 A. Yeah.</p> <p>16 Q. Is this business still in operation?</p> <p>17 A. No, it's closed. Business failed and we</p> <p>18 closed out.</p> <p>19 Q. I'm sorry, say that again.</p> <p>20 A. The business failed.</p> <p>21 Q. Oh, the business failed.</p> <p>22 A. So we don't make money. So we just</p> <p>23 closed down after about three, four years.</p> <p>24 Q. Do you recall what years that business</p> <p>25 was in operation?</p> <p style="text-align: right;">13</p>	<p>1 A. H. SUNG</p> <p>2 A. No.</p> <p>3 Q. So no other businesses besides the 50</p> <p>4 Food Corp. at 805 Third Avenue and this book</p> <p>5 club?</p> <p>6 A. No.</p> <p>7 Q. You owned no other?</p> <p>8 A. No.</p> <p>9 Q. Although you may not individually own</p> <p>10 any additional companies, are you involved in the</p> <p>11 management of any other companies besides the</p> <p>12 deli located at 805 Third Avenue and the book</p> <p>13 club that you just described?</p> <p>14 A. I work for my -- some other companies</p> <p>15 for owned by my wife.</p> <p>16 Q. Okay.</p> <p>17 A. Okay. So just, you know.</p> <p>18 Q. What is your wife's name?</p> <p>19 A. Yun Sung.</p> <p>20 Q. Can you spell that please?</p> <p>21 A. Y-U-N S-U-N-G.</p> <p>22 Q. So you have helped your wife --</p> <p>23 A. Just --</p> <p>24 Q. -- with some of the businesses that she</p> <p>25 owns?</p> <p style="text-align: right;">15</p>
<p>1 A. H. SUNG</p> <p>2 A. That is starting about 1997.</p> <p>3 Q. Okay.</p> <p>4 A. Till 2002, something like that.</p> <p>5 Q. Did the business have employees?</p> <p>6 A. Yeah.</p> <p>7 Q. How many employees on average?</p> <p>8 A. About two employee for as a cashier.</p> <p>9 Q. Two employees?</p> <p>10 A. Yeah.</p> <p>11 Q. Were you the sole owner of that</p> <p>12 business?</p> <p>13 A. No, with my brother.</p> <p>14 Q. With your brother?</p> <p>15 A. Yeah.</p> <p>16 Q. Were you responsible for the hiring of</p> <p>17 the employees and the payroll or was someone</p> <p>18 else --</p> <p>19 A. As the owner, I hired the employee, I</p> <p>20 decide how much we pay.</p> <p>21 Q. So besides 50 Food Corp. and besides</p> <p>22 this book company that you just described, have</p> <p>23 there been any other businesses --</p> <p>24 A. No.</p> <p>25 Q. -- that you have owned or managed?</p> <p style="text-align: right;">14</p>	<p>1 A. H. SUNG</p> <p>2 A. Just consulting, yeah.</p> <p>3 Q. I'm sorry, just what? Oh, consulting.</p> <p>4 Just consulting with her?</p> <p>5 A. Yeah.</p> <p>6 Q. Does your wife currently own any</p> <p>7 businesses right now that you have been involved</p> <p>8 with?</p> <p>9 THE WITNESS: Do I need answer for this</p> <p>10 because --</p> <p>11 MR. VARACALLI: Yes.</p> <p>12 THE WITNESS: -- because I don't think</p> <p>13 this is involving any --</p> <p>14 MR. VARACALLI: Yes, you have to answer.</p> <p>15 A. Yeah.</p> <p>16 Q. Can you tell me a little bit about those</p> <p>17 businesses?</p> <p>18 A. The business is Korean restaurant</p> <p>19 business.</p> <p>20 Q. What is the name of this restaurant?</p> <p>21 A. Gaon Nuri.</p> <p>22 Q. Can you spell that for me, please.</p> <p>23 A. G-A-O-N N-U-R-I.</p> <p>24 Q. G-A-</p> <p>25 A. O-N.</p> <p style="text-align: right;">16</p>

<p>1 A. H. SUNG</p> <p>2 Q. That's one word?</p> <p>3 A. Yeah.</p> <p>4 Q. And the next word is, N-U-R-I.</p> <p>5 A. Yeah.</p> <p>6 Q. And this is a Korean restaurant that</p> <p>7 your wife owns?</p> <p>8 A. Yeah.</p> <p>9 Q. Where is this restaurant located?</p> <p>10 A. 32nd Street, Broadway.</p> <p>11 Q. When did your wife start this</p> <p>12 restaurant?</p> <p>13 A. 2012.</p> <p>14 Q. Does she own it by herself or are there</p> <p>15 other co-owners of the restaurant?</p> <p>16 A. Herself.</p> <p>17 Q. Excuse me?</p> <p>18 A. By herself.</p> <p>19 Q. By herself, okay. How many employees</p> <p>20 does this restaurant currently have?</p> <p>21 A. I don't remember that.</p> <p>22 Q. What is your involvement in the</p> <p>23 restaurant?</p> <p>24 A. Just help for the menus and, you know.</p> <p>25 Actually, I just go there and look, you know,</p> <p style="text-align: right;">17</p>	<p>1 A. H. SUNG</p> <p>2 Q. 32nd Street.</p> <p>3 A. Uh-huh.</p> <p>4 Q. What kind of work was she involved with</p> <p>5 at the Silo Deli on 32nd Street?</p> <p>6 A. Like a manager.</p> <p>7 Q. Like a manager?</p> <p>8 A. Yeah.</p> <p>9 Q. Did you provide some training and</p> <p>10 assistance to her in her responsibilities as a</p> <p>11 manager at the Silo Cafe?</p> <p>12 A. We hired a manager in that store and</p> <p>13 that was manager, you know, operates the store.</p> <p>14 But she just went there, you know, just for -- as</p> <p>15 an owner.</p> <p>16 Q. As an owner?</p> <p>17 A. Yeah.</p> <p>18 Q. During her time at the Silo Cafe, was</p> <p>19 she involved in hiring employees, and tracking</p> <p>20 their hours and setting their pay?</p> <p>21 A. Yeah, I think most of the kind of work</p> <p>22 handled by the manager. Of course, she</p> <p>23 supervised, you know, how they doing. So she</p> <p>24 knows about that I believe.</p> <p>25 Q. So is she the sole manager at Gaon Nuri,</p> <p style="text-align: right;">19</p>
<p>1 A. H. SUNG</p> <p>2 things like that, as her husband, you know.</p> <p>3 Q. What's your wife's background in the</p> <p>4 restaurant business?</p> <p>5 A. She don't experience any restaurant --</p> <p>6 actually, she worked for Silo Cafe on 32nd</p> <p>7 Street. I sold another one. Actually, she</p> <p>8 worked -- she involving that deli business</p> <p>9 located in 32nd Street.</p> <p>10 Q. Okay.</p> <p>11 A. And that is her background. Actually,</p> <p>12 she was nurse in Korea.</p> <p>13 Q. Okay.</p> <p>14 A. But when she moved to the United States,</p> <p>15 she don't work until my son went to the college.</p> <p>16 Q. What year was that that your wife began</p> <p>17 to work?</p> <p>18 A. I think it's about 2006.</p> <p>19 Q. 2006?</p> <p>20 A. Yeah.</p> <p>21 Q. So in 2006, she became involved in the</p> <p>22 Silo Cafe, the other Silo Cafe.</p> <p>23 A. Right.</p> <p>24 Q. That's located at --</p> <p>25 A. 32nd.</p> <p style="text-align: right;">18</p>	<p>1 A. H. SUNG</p> <p>2 the Korean restaurant currently?</p> <p>3 A. No, we have manager there.</p> <p>4 Q. You have managers there?</p> <p>5 A. She has a manager there.</p> <p>6 Q. Oh, okay.</p> <p>7 A. Yeah.</p> <p>8 Q. How often would you say in a typical</p> <p>9 week, if you could average, do you spend time</p> <p>10 consulting with your wife regarding the business</p> <p>11 at Gaon Nuri?</p> <p>12 A. It barely depends on maybe about I'd say</p> <p>13 one day per week.</p> <p>14 Q. One day per week?</p> <p>15 A. Yeah, not whole hours even. Just stop</p> <p>16 by and I have dinner with my friend and look how</p> <p>17 they, you know, doing and then just consulting</p> <p>18 her on what was wrong, what was right, what was</p> <p>19 good, you know, kind of.</p> <p>20 Q. When you say you go there and you look</p> <p>21 around to see how things are doing --</p> <p>22 A. Yeah.</p> <p>23 Q. -- do you review any business records --</p> <p>24 A. No.</p> <p>25 Q. -- with your wife?</p> <p style="text-align: right;">20</p>

<p>1 A. H. SUNG</p> <p>2 A. No, I didn't.</p> <p>3 Q. Do you ever discuss issues involving</p> <p>4 payroll at the restaurant?</p> <p>5 A. No, payroll is handled by, I think it's</p> <p>6 either manager or accountant, I believe, yeah.</p> <p>7 Q. Are you involved at all in decisions</p> <p>8 regarding pay of the employees or the hours that</p> <p>9 the employees of the restaurant work?</p> <p>10 A. That is handled by the manager.</p> <p>11 Q. At any time, perhaps at the beginning,</p> <p>12 at the opening of the restaurant --</p> <p>13 A. No.</p> <p>14 Q. -- did you --</p> <p>15 A. I didn't.</p> <p>16 Q. Okay. So you indicated that your wife</p> <p>17 owns this Korean restaurant. Does she own any</p> <p>18 other --</p> <p>19 A. No.</p> <p>20 Q. -- restaurants?</p> <p>21 A. No.</p> <p>22 Q. Is she involved in any other businesses</p> <p>23 besides --</p> <p>24 A. The Silo Cafe in 32nd Street.</p> <p>25 Q. Is she still involved --</p> <p style="text-align: right;">21</p>	<p>1 A. H. SUNG</p> <p>2 Q. Okay.</p> <p>3 A. Both locations I have manager.</p> <p>4 Q. Okay.</p> <p>5 A. But I think she just went there, you</p> <p>6 know, for as supervising things, you know, and</p> <p>7 just spending her time because otherwise, you</p> <p>8 know, like that.</p> <p>9 Q. So when you say supervising, is she</p> <p>10 supervising some of the employees at the Silo</p> <p>11 Cafe at 32nd Street?</p> <p>12 A. No, just supervising for employees by</p> <p>13 the manager.</p> <p>14 Q. So supervising the employees and the</p> <p>15 manager; is that right?</p> <p>16 A. Yeah.</p> <p>17 Q. So far we have discussed your</p> <p>18 involvement in the landscaping business, the book</p> <p>19 business.</p> <p>20 A. Right.</p> <p>21 Q. The two Silo Cafe, 50 Food Corp. and the</p> <p>22 Silo Cafe located at 32nd Street, and the Korean</p> <p>23 restaurant on 32nd Street, that's owned by your</p> <p>24 wife.</p> <p>25 A. Right.</p> <p style="text-align: right;">23</p>
<p>1 A. H. SUNG</p> <p>2 A. Yeah, yeah.</p> <p>3 Q. -- at the Silo Cafe at 32nd Street?</p> <p>4 A. Yeah.</p> <p>5 Q. Who owns that Cafe at 32nd Street?</p> <p>6 A. Mine.</p> <p>7 Q. So you own that --</p> <p>8 A. Yeah.</p> <p>9 Q. -- cafe at 32nd Street?</p> <p>10 A. Yeah.</p> <p>11 Q. So when did you open the Silo Cafe at</p> <p>12 32nd Street?</p> <p>13 A. 2006.</p> <p>14 Q. What is your wife's position right now</p> <p>15 at the Silo Cafe at 32nd Street?</p> <p>16 A. It's very hard to say the position, but</p> <p>17 she just went there spending time, you know.</p> <p>18 Q. So could you describe to me a little bit</p> <p>19 more about her involvement at the Silo Cafe at</p> <p>20 32nd Street?</p> <p>21 A. I think just owner's wife.</p> <p>22 Q. Well, could you tell me a little bit</p> <p>23 about what her work entails as an owner's wife?</p> <p>24 A. Because we have -- I have a manager in</p> <p>25 Silo Cafe.</p> <p style="text-align: right;">22</p>	<p>1 A. H. SUNG</p> <p>2 Q. Besides those businesses, are you</p> <p>3 involved in any other --</p> <p>4 A. No.</p> <p>5 Q. -- business that you may either own or</p> <p>6 that you consult with?</p> <p>7 A. No.</p> <p>8 Q. Do you know what type of corporation 50</p> <p>9 Food Corp. is?</p> <p>10 A. Just corporate -- I think it's just C</p> <p>11 corporation, C corporation.</p> <p>12 Q. A C corporation?</p> <p>13 A. Yeah.</p> <p>14 Q. What year was it incorporated, 50 Food</p> <p>15 Corp.?</p> <p>16 A. 2008.</p> <p>17 Q. 2008?</p> <p>18 A. Yeah.</p> <p>19 Q. So 50 Food Corp. was opened after the</p> <p>20 Silo Cafe at 32nd Street?</p> <p>21 A. Yeah.</p> <p>22 Q. Did you incorporate the 50 Food Corp.</p> <p>23 business?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Was 50 Food Corp. always located at 805</p> <p style="text-align: right;">24</p>

<p>1 A. H. SUNG</p> <p>2 Third Avenue?</p> <p>3 A. Yeah.</p> <p>4 Q. That's been the only location?</p> <p>5 A. Yeah.</p> <p>6 Q. Besides yourself, have there ever been</p> <p>7 any other corporate officers of 50 Food Corp.?</p> <p>8 A. No.</p> <p>9 Q. The Silo Cafe at 32nd Street, I</p> <p>10 understand that that business also goes by the</p> <p>11 name Silo Cafe; is that right?</p> <p>12 A. Uh-huh.</p> <p>13 Q. What was the corporate entity name?</p> <p>14 A. Silo Cafe Corp.</p> <p>15 Q. Have there ever been any other corporate</p> <p>16 owners of that business?</p> <p>17 A. No.</p> <p>18 Q. So you are the sole owner and the sole</p> <p>19 shareholder --</p> <p>20 A. Yes.</p> <p>21 Q. -- of both the Silo Cafe at 805 Third</p> <p>22 Avenue --</p> <p>23 A. That's correct.</p> <p>24 Q. -- and the Silo Cafe at 32nd Street?</p> <p>25 A. That's correct.</p> <p style="text-align: right;">25</p>	<p>1 A. H. SUNG</p> <p>2 W-O-O. And the last name is Hong, H-O-N-G.</p> <p>3 A. That's correct.</p> <p>4 Q. Does this person have an office in New</p> <p>5 York City?</p> <p>6 A. Yeah. Actually, Queens.</p> <p>7 Q. In Queens?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Is this person the bookkeeper of only 50</p> <p>10 Food Corp. or does he also work as a bookkeeper</p> <p>11 for any of the other businesses that your family</p> <p>12 is involved in?</p> <p>13 A. He did all the businesses too.</p> <p>14 Q. Your other businesses as well, okay.</p> <p>15 Has Mr. Hong been the bookkeeper --</p> <p>16 A. Not bookkeeper, it's accountant.</p> <p>17 Q. Oh, excuse me, accountant. Has he been</p> <p>18 the accountant of 50 Food Corp. since 50 Food</p> <p>19 Corp. opened?</p> <p>20 A. Yeah.</p> <p>21 Q. Can you tell me a little bit about what</p> <p>22 work you give Mr. Hong as the accountant? Is he</p> <p>23 in charge of your taxes or your payroll? Can you</p> <p>24 tell me a little bit about the work he does?</p> <p>25 A. He does all kind of accounting work,</p> <p style="text-align: right;">27</p>
<p>1 A. H. SUNG</p> <p>2 Q. Besides your wife, who you described</p> <p>3 earlier as supervising at the Silo Cafe at 32nd</p> <p>4 Street, are there any other family members or</p> <p>5 business partners that have been involved --</p> <p>6 A. No.</p> <p>7 Q. -- in either one of the Silo Cafes?</p> <p>8 A. No.</p> <p>9 Q. The Silo Cafe that's located at 805</p> <p>10 Third Avenue, is that property rented?</p> <p>11 A. Yeah.</p> <p>12 Q. Do you know when the lease was signed?</p> <p>13 A. I think it's 2007.</p> <p>14 Q. Did you sign the lease?</p> <p>15 A. Yeah.</p> <p>16 Q. Does 50 Food Corp. have a bookkeeper or</p> <p>17 an accountant?</p> <p>18 A. We have accountant.</p> <p>19 Q. You have an accountant?</p> <p>20 A. Yes.</p> <p>21 Q. Who is the accountant?</p> <p>22 A. Sung Woo Hong. S-U-N-G W-O-O, last name</p> <p>23 Hong, H-O-N-G.</p> <p>24 Q. So I'm just going to repeat that. The</p> <p>25 first name is Sung, S-U-N-G. Second name is Woo,</p> <p style="text-align: right;">26</p>	<p>1 A. H. SUNG</p> <p>2 payroll, taxes, everything.</p> <p>3 Q. What kind of work does he do for your</p> <p>4 payroll?</p> <p>5 A. He calculated the payroll taxes.</p> <p>6 Q. Excuse me?</p> <p>7 A. He calculated the payroll taxes. He</p> <p>8 reported the payroll 941 every, you know, quarter</p> <p>9 and he reported what the amount is, whatever.</p> <p>10 Whatever accounting work, he does everything.</p> <p>11 Q. Does he do the taxes as well?</p> <p>12 A. Uh-huh.</p> <p>13 Q. So you indicated that Mr. Hong is</p> <p>14 involved in determining what payroll taxes -- to</p> <p>15 calculate the payroll taxes?</p> <p>16 A. Yes.</p> <p>17 Q. Is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Who communicates with Mr. Hong?</p> <p>20 A. Me.</p> <p>21 Q. You communicate with him?</p> <p>22 A. I communicate with him, yeah.</p> <p>23 Q. How often do you speak with him</p> <p>24 regarding the payroll or any other business that</p> <p>25 he has regarding 50 Food Corp.?</p> <p style="text-align: right;">28</p>

<p>1 A. H. SUNG</p> <p>2 A. Maybe about one to two times a month.</p> <p>3 Q. When you speak with him one to two times</p> <p>4 a month, are you speaking with him on issues</p> <p>5 specifically regarding the payroll?</p> <p>6 A. Sometimes payroll, sometimes question</p> <p>7 about, you know, taxes, whatever, corporation</p> <p>8 taxes, whatever, you know. Tax questions I have,</p> <p>9 I call him.</p> <p>10 Q. So you're the only one who has</p> <p>11 communications with Mr. Hong?</p> <p>12 A. Sometimes my manager call because when</p> <p>13 he made the payroll, he have to know how much for</p> <p>14 the taxes. Because for my manager, he made the</p> <p>15 payroll for every week.</p> <p>16 Q. The manager that you're referring to is</p> <p>17 Minchul Kim.</p> <p>18 A. Yeah.</p> <p>19 Q. First name, M-I-N-C-H-U-L. Last name,</p> <p>20 K-I-M, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. How many employees does 50 Food Corp.</p> <p>23 right now have?</p> <p>24 A. I think it's about ten. I don't know.</p> <p>25 I don't remember exact number.</p> <p style="text-align: right;">29</p>	<p>1 A. H. SUNG</p> <p>2 A. Citibank.</p> <p>3 Q. What individuals have authority to</p> <p>4 access that bank account?</p> <p>5 A. Minchul and me.</p> <p>6 Q. Minchul Kim, the manager, right?</p> <p>7 A. Uh-huh.</p> <p>8 Q. The equipment at 50 Food Corp. -- when I</p> <p>9 say equipment, I suppose I'm referring to the</p> <p>10 buffet structure in the Cafe.</p> <p>11 A. You mean the cooking equipment?</p> <p>12 Q. The cooking equipment, that's correct.</p> <p>13 The cooking equipment in the kitchen and also the</p> <p>14 piece of furniture that's used for the buffet in</p> <p>15 the cafe, is that all equipment that's owned by</p> <p>16 50 Food Corp. or do you rent that equipment?</p> <p>17 A. Most of them is we owned.</p> <p>18 Q. Most of it you owned?</p> <p>19 A. Yeah.</p> <p>20 Q. What insurance policies, if any, does 50</p> <p>21 Food Corp. have?</p> <p>22 A. We have a liability, business liability,</p> <p>23 and Workers' Compensation and disability</p> <p>24 Insurance.</p> <p>25 Q. So I believe you testified earlier that</p> <p style="text-align: right;">31</p>
<p>1 A. H. SUNG</p> <p>2 Q. Ten employees?</p> <p>3 A. Maybe ten, a little more.</p> <p>4 Q. Around ten?</p> <p>5 A. Yeah, around ten.</p> <p>6 Q. Are most of these employees paid by</p> <p>7 check?</p> <p>8 A. Most of them paid by cash.</p> <p>9 Q. Most of them are paid by cash?</p> <p>10 A. Only about four people paid by check. I</p> <p>11 don't know. Because I don't know the</p> <p>12 the status for each individual, and I don't know</p> <p>13 if they don't even have a bank account.</p> <p>14 Q. So I assume when you're speaking with</p> <p>15 Mr. Hong regarding payroll taxes, you're only</p> <p>16 speaking with him about payroll taxes for the</p> <p>17 four individuals, estimated four individuals, who</p> <p>18 are paid by check; is that right?</p> <p>19 A. About the payroll.</p> <p>20 Q. About the payroll?</p> <p>21 A. Yeah.</p> <p>22 Q. How many bank accounts does 50 Food</p> <p>23 Corp. have?</p> <p>24 A. Just one.</p> <p>25 Q. What bank is your bank account located?</p> <p style="text-align: right;">30</p>	<p>1 A. H. SUNG</p> <p>2 50 Food Corp. at 805 Third Avenue opened for</p> <p>3 business in 2008; is that right?</p> <p>4 A. That's correct.</p> <p>5 Q. Do you recall when in 2008, 50 Food</p> <p>6 Corp. was opened for business?</p> <p>7 A. Business open is I think in August 2008,</p> <p>8 August.</p> <p>9 Q. August 2008?</p> <p>10 A. I don't remember the exact date.</p> <p>11 Q. That's okay.</p> <p>12 A. But August in 2008.</p> <p>13 Q. When you first opened the doors in</p> <p>14 August of 2008, do you recall how many employees</p> <p>15 50 Food Corp. had?</p> <p>16 A. I think it's about ten.</p> <p>17 Q. About ten?</p> <p>18 A. Yeah, same.</p> <p>19 Q. Did those ten employees include a</p> <p>20 manager, or were these just general employees who</p> <p>21 helped with the cooking and the preparing of</p> <p>22 food?</p> <p>23 A. I think it's not including manager.</p> <p>24 With the manager about 11, 12, something.</p> <p>25 Q. Okay.</p> <p style="text-align: right;">32</p>

<p>1 A. H. SUNG</p> <p>2 A. But there's always changing, you know,</p> <p>3 it's not fixed.</p> <p>4 Q. Did you hire a manager at the inception</p> <p>5 of the business in --</p> <p>6 A. Yeah.</p> <p>7 Q. -- August 2008?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Who was the manager you hired?</p> <p>10 A. I don't remember his name, but he just</p> <p>11 worked for about six weeks or two months and then</p> <p>12 he left the job.</p> <p>13 Q. Where did you find this individual? Was</p> <p>14 it a man?</p> <p>15 A. He is a man, yeah.</p> <p>16 Q. But you cannot remember his name?</p> <p>17 A. No.</p> <p>18 Q. Where did you find this manager or this</p> <p>19 individual to work as a manager?</p> <p>20 A. I think someone was introduced to me</p> <p>21 because when I hiring the manager.</p> <p>22 Q. So someone introduced you to this</p> <p>23 person?</p> <p>24 A. Yeah because we got people who supplied</p> <p>25 for the food to the Silo Cafe at 32nd Street.</p> <p style="text-align: right;">33</p>	<p>1 A. H. SUNG</p> <p>2 August of 2008, did that person appear to have</p> <p>3 experience --</p> <p>4 A. Yeah.</p> <p>5 Q. -- managing a business?</p> <p>6 A. Yes.</p> <p>7 Q. Could you describe what instructions you</p> <p>8 provided to this individual about, you know, how</p> <p>9 you wanted the business to be run with regards to</p> <p>10 the payroll?</p> <p>11 A. Payroll I just gave him total budget of</p> <p>12 the payroll.</p> <p>13 Q. Okay.</p> <p>14 A. You can spend how much, you know. That</p> <p>15 I remember, but I don't remember the amount.</p> <p>16 But, you know, he hired -- he interviewed all the</p> <p>17 employees, you know, he decide how much he paying</p> <p>18 at that point.</p> <p>19 Q. So the first person you hired was the</p> <p>20 manager?</p> <p>21 A. Right.</p> <p>22 Q. And then he hired everyone else?</p> <p>23 A. No, he hired all the employee, but no</p> <p>24 one is there what he hired.</p> <p>25 Q. I guess my question is when you started</p> <p style="text-align: right;">35</p>
<p>1 A. H. SUNG</p> <p>2 I'm talking about the salesmen of the vendor,</p> <p>3 they know all the people. So we asked him to</p> <p>4 introduce some manager and several vendors says</p> <p>5 person, introduce us, but for purpose of the</p> <p>6 person for the interview and I pick one of them.</p> <p>7 Q. I actually think we might have the name</p> <p>8 of a manager in your discovery responses. Do you</p> <p>9 recall looking up the name of the previous</p> <p>10 manager and giving it to Mr. Varacalli?</p> <p>11 A. No, I don't even remember previous</p> <p>12 manager's name.</p> <p>13 Q. Okay. Let me take a look. I think I</p> <p>14 recall that, but I might be mistaken. Let me</p> <p>15 take a look. Okay, I may be mistaken. Is the</p> <p>16 individual Mr. Wonmo Hwang?</p> <p>17 A. No --</p> <p>18 Q. He's the chef?</p> <p>19 A. He's the chef. He is still working</p> <p>20 there.</p> <p>21 Q. So do you recall who introduced you to</p> <p>22 this manager? You said it was a vendor --</p> <p>23 A. One of the vendors, yeah.</p> <p>24 Q. Okay, got it. And the individual who</p> <p>25 you had hired as a manager at the beginning in</p> <p style="text-align: right;">34</p>	<p>1 A. H. SUNG</p> <p>2 the business in August of 2008, did you hire the</p> <p>3 first set of employees?</p> <p>4 A. No, no, no, he hired.</p> <p>5 Q. So the manager --</p> <p>6 A. I hired the manager. He hired all the</p> <p>7 employee.</p> <p>8 Q. Oh, okay.</p> <p>9 A. Yeah.</p> <p>10 Q. Was it very soon after you opened the</p> <p>11 business that you hired the manager and he then</p> <p>12 hired everyone else?</p> <p>13 A. Because I hired him about months before</p> <p>14 the opening.</p> <p>15 Q. Got it.</p> <p>16 A. Yeah.</p> <p>17 Q. So you recall that he hired maybe like</p> <p>18 the ten individuals after --</p> <p>19 A. That's correct.</p> <p>20 Q. -- you hired him?</p> <p>21 A. Correct.</p> <p>22 Q. Got it. Besides advising him what the</p> <p>23 total budget was, you know, for the business so</p> <p>24 that he could prepare the payroll --</p> <p>25 A. Right, right.</p> <p style="text-align: right;">36</p>

<p>1 A. H. SUNG</p> <p>2 Q. -- did you provide him with any other</p> <p>3 instructions?</p> <p>4 A. Of course, as an owner, I have to give</p> <p>5 him all the instructions how you can handle</p> <p>6 business, how you can do the service, lot of</p> <p>7 things.</p> <p>8 Q. Did you provide him any instructions</p> <p>9 about, for example, what the hourly rate should</p> <p>10 be for the workers?</p> <p>11 A. Yeah, yeah, I think so. I remember</p> <p>12 that.</p> <p>13 Q. So you told him this is -- X is the --</p> <p>14 A. But most of the --</p> <p>15 Q. Let me just finish my question before</p> <p>16 you respond.</p> <p>17 A. Okay.</p> <p>18 Q. So you provided him with information</p> <p>19 like this amount would be a good amount for the</p> <p>20 hourly rate for the employees or this is the</p> <p>21 amount that you should pay the employees?</p> <p>22 A. No, I didn't decide myself that. That</p> <p>23 is decided by the manager. Whenever he</p> <p>24 interviews some employee, he can check what his</p> <p>25 experience and he decides how much he want to</p> <p style="text-align: right;">37</p>	<p>1 A. H. SUNG</p> <p>2 Q. And he had experience as a manager?</p> <p>3 A. Right.</p> <p>4 Q. But do you recall reviewing with him,</p> <p>5 okay, listen, the minimum wage in New York State</p> <p>6 is this amount?</p> <p>7 A. Uh-huh.</p> <p>8 Q. So you did have a discussion with him --</p> <p>9 A. Yes.</p> <p>10 Q. -- about hourly rates?</p> <p>11 A. Maybe, yes, I think so.</p> <p>12 Q. Did you ever provide him with any</p> <p>13 recommendation about how to track hours of</p> <p>14 employees?</p> <p>15 A. Yeah, I think as a manager, of course,</p> <p>16 he need to track for the hours.</p> <p>17 Q. Okay.</p> <p>18 A. For all the employee, he did it.</p> <p>19 Q. So I understand that this individual</p> <p>20 whose name we don't know had, you know, some</p> <p>21 experience in business and --</p> <p>22 A. Yes.</p> <p>23 Q. -- had a background in perhaps payroll</p> <p>24 and hiring employees, and in general managing a</p> <p>25 business; is that right?</p> <p style="text-align: right;">39</p>
<p>1 A. H. SUNG</p> <p>2 pay. And then he bring all the report to me, I</p> <p>3 say this is okay, you know, I just accept it.</p> <p>4 Q. So you approved of the rates?</p> <p>5 A. I approved, yes. That's a right</p> <p>6 description.</p> <p>7 Q. Did you provide him with any guidance of</p> <p>8 what an industry standard hourly rate would be --</p> <p>9 A. Yeah.</p> <p>10 Q. -- for positions?</p> <p>11 A. Yeah, I told him what is minimum wage</p> <p>12 and what you have to pay. He knows all the rules</p> <p>13 of the labor things because he's experienced</p> <p>14 manager.</p> <p>15 Q. Okay.</p> <p>16 A. Actually, he knows better than me at</p> <p>17 that point. Because that 2008, I just starting</p> <p>18 this kind of business.</p> <p>19 Q. Uh-huh.</p> <p>20 A. I don't know that much about the labor</p> <p>21 law, but he knows everything what, you know, for</p> <p>22 the rules.</p> <p>23 Q. So I understand that the manager knew a</p> <p>24 lot of this information.</p> <p>25 A. Right.</p> <p style="text-align: right;">38</p>	<p>1 A. H. SUNG</p> <p>2 A. That's right, yeah.</p> <p>3 Q. But I guess my question is as I'm asking</p> <p>4 you to remember, you know, the time in August</p> <p>5 2008, I know a lot of years have passed since</p> <p>6 then, but I'm asking you to remember, you know,</p> <p>7 in your initial conversations with this manager,</p> <p>8 what, if any, conversations you had about, you</p> <p>9 know, what is best practice for him. You, as the</p> <p>10 owner, telling him, you know, what he should do</p> <p>11 with respect --</p> <p>12 A. Yeah.</p> <p>13 Q. -- of tracking hours. Can you tell me</p> <p>14 about that?</p> <p>15 A. Yeah, he -- I told him -- of course, I</p> <p>16 think I told him he need to track all the time</p> <p>17 record.</p> <p>18 Q. Okay.</p> <p>19 A. But, you know, and then how much hours</p> <p>20 they worked for the week, you know.</p> <p>21 Q. Okay.</p> <p>22 A. And you have to keep the record for</p> <p>23 that. So I think he did it.</p> <p>24 Q. Did you ever provide him with or</p> <p>25 recommend that he use a particular document to</p> <p style="text-align: right;">40</p>

<p>1 A. H. SUNG</p> <p>2 track those hours?</p> <p>3 A. He -- we made kind of form that is</p> <p>4 inside form in record for each employee how many</p> <p>5 hours per week and how much -- we have that one.</p> <p>6 I think we still have that one.</p> <p>7 Q. Are you referring to the document that's</p> <p>8 entitled payment report?</p> <p>9 A. Yeah.</p> <p>10 Q. When you say we created it, is that a</p> <p>11 document that you created and instructed him to</p> <p>12 use at the business?</p> <p>13 A. I think he created and I saw that, and</p> <p>14 that's I approved to using that.</p> <p>15 Q. Okay.</p> <p>16 A. For the inside record.</p> <p>17 Q. So what you're telling me --</p> <p>18 A. Yeah.</p> <p>19 Q. -- is that this manager created that</p> <p>20 document?</p> <p>21 A. Yeah.</p> <p>22 Q. And he showed it to you and you said</p> <p>23 okay, yes --</p> <p>24 A. Yeah.</p> <p>25 Q. -- I approve of this. This is a good</p> <p style="text-align: right;">41</p>	<p>1 A. H. SUNG</p> <p>2 Q. In your experience, not just in your</p> <p>3 involvement in 50 Food Corp., in your business</p> <p>4 experience, when you hire an individual to work</p> <p>5 for your business, is there any type of</p> <p>6 identifying documents that you ask the individual</p> <p>7 to show you?</p> <p>8 A. That is handled by the manager. I don't</p> <p>9 involve that.</p> <p>10 Q. Do you recall when you hired this</p> <p>11 particular manager, whose name we don't remember,</p> <p>12 whether you went through the typical procedures</p> <p>13 of asking him for his ID, filling out paperwork</p> <p>14 where you would write out his name and his</p> <p>15 address?</p> <p>16 A. I don't remember.</p> <p>17 Q. You don't remember. Do you think that</p> <p>18 you do not have any documents accessible right</p> <p>19 now --</p> <p>20 A. About him?</p> <p>21 Q. -- about him?</p> <p>22 A. I don't remember that.</p> <p>23 Q. Would there be a particular place where</p> <p>24 you might keep records where it might contain his</p> <p>25 name and his information?</p> <p style="text-align: right;">43</p>
<p>1 A. H. SUNG</p> <p>2 way to track the hours?</p> <p>3 A. Right.</p> <p>4 Q. So you indicated that this manager whose</p> <p>5 name you didn't know, you were recommended -- he</p> <p>6 was recommended to you by a vendor?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Could you think of anybody who might be</p> <p>11 able to, you know, recall that individual's name?</p> <p>12 A. I don't think so. It's almost ten years</p> <p>13 ago now.</p> <p>14 Q. When you hired him, did you have him</p> <p>15 fill out any forms? Did he give you his ID for</p> <p>16 tax purposes? Did you take any of that</p> <p>17 information since he was an employee of the</p> <p>18 business?</p> <p>19 A. I don't remember that.</p> <p>20 Q. Do you have the habit of keeping</p> <p>21 employment records of your employees at 50 Food</p> <p>22 Corp. and of the other businesses that you've</p> <p>23 been involved with over the years?</p> <p>24 A. Yeah, sometimes I just go there check</p> <p>25 what we have it, you know.</p> <p style="text-align: right;">42</p>	<p>1 A. H. SUNG</p> <p>2 A. I don't think so. We don't keep the</p> <p>3 record for that long.</p> <p>4 Q. You don't think there's anybody who you</p> <p>5 could inquire with about this particular</p> <p>6 individual's name?</p> <p>7 A. No. Maybe she just went back to Korea,</p> <p>8 I don't know.</p> <p>9 Q. Is the manager that we're referring to a</p> <p>10 man or a woman?</p> <p>11 A. A man.</p> <p>12 Q. Was your wife involved with 50 Food</p> <p>13 Corp. at this time?</p> <p>14 A. No.</p> <p>15 Q. You indicated earlier that there's a</p> <p>16 chef at 50 Food Corp.?</p> <p>17 A. Uh-huh.</p> <p>18 Q. What is the chef's name again?</p> <p>19 A. Hwang, H-W-A-N-G, that's last name.</p> <p>20 W-O-N-M-O.</p> <p>21 Q. Wonmo?</p> <p>22 A. Wonmo Hwang.</p> <p>23 Q. Wonmo Hwang is the chef at 50 Food</p> <p>24 Corp.?</p> <p>25 A. Yeah.</p> <p style="text-align: right;">44</p>

<p>1 A. H. SUNG</p> <p>2 Q. He's been with the business for a very</p> <p>3 long time?</p> <p>4 A. Since the beginning until now.</p> <p>5 Q. Is it possible that he could recall the</p> <p>6 name of the manager?</p> <p>7 A. I don't think he would remember.</p> <p>8 Q. Do you think he wouldn't remember</p> <p>9 because you've spoken to him about it?</p> <p>10 A. I don't know.</p> <p>11 Q. Did you speak with him about -- have you</p> <p>12 recently spoken to the chef --</p> <p>13 A. No.</p> <p>14 Q. -- about the manager --</p> <p>15 A. No, no.</p> <p>16 Q. -- what his name is?</p> <p>17 A. I don't know. I didn't remember. I</p> <p>18 didn't even ask.</p> <p>19 Q. I guess my question is, you know, we had</p> <p>20 submitted to you, through your attorney,</p> <p>21 Mr. Varacalli, a list of questions. One of the</p> <p>22 questions touches on the identity of this</p> <p>23 particular manager.</p> <p>24 And my question to you right now is that</p> <p>25 in preparing your responses to these questions,</p> <p style="text-align: right;">45</p>	<p>1 A. H. SUNG</p> <p>2 -- I don't remember exact time, but less than</p> <p>3 four weeks.</p> <p>4 Q. You indicated earlier that this</p> <p>5 particular manager, the first manager, created a</p> <p>6 document --</p> <p>7 A. Yes.</p> <p>8 Q. -- that you approved?</p> <p>9 A. That's right.</p> <p>10 Q. And you said that the document includes</p> <p>11 the amount of hours that the employees work?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Are we referring to the document called</p> <p>14 payment report that had been produced --</p> <p>15 A. Yeah, I think so.</p> <p>16 Q. -- in this litigation?</p> <p>17 A. It's Excel form.</p> <p>18 Q. So I'm going to show you a couple of</p> <p>19 documents and I would like you to confirm what</p> <p>20 document you're referring to.</p> <p>21 A. Sure, okay.</p> <p>22 MS. BARBOSA: So we can mark this as</p> <p>23 Plaintiff's Exhibit 1.</p> <p>24 (Whereupon, a document marked D001388</p> <p>25 was marked Plaintiff's Exhibit 1 for</p> <p style="text-align: right;">47</p>
<p>1 A. H. SUNG</p> <p>2 did you, you know, speak to individuals like the</p> <p>3 chef who, you know, may have worked with this</p> <p>4 manager to help you remember the name of this</p> <p>5 manager in order to respond?</p> <p>6 A. I can ask him when I back to the store.</p> <p>7 Q. But did you ask him --</p> <p>8 A. No.</p> <p>9 Q. -- recently?</p> <p>10 A. I didn't.</p> <p>11 Q. Got it. So you can ask this chef?</p> <p>12 A. Yeah, I can ask.</p> <p>13 Q. Okay, very good. And it's your</p> <p>14 testimony that you do not have any documents</p> <p>15 which would include the name of this particular</p> <p>16 individual?</p> <p>17 A. No because he just worked for about six</p> <p>18 weeks.</p> <p>19 Q. Okay, okay.</p> <p>20 A. You know. Not even six weeks. Maybe</p> <p>21 about -- because once he left work.</p> <p>22 Q. Okay.</p> <p>23 A. Because I do my -- I work as a manager</p> <p>24 myself until Minchul came. So I worked as a</p> <p>25 manager about month. I think he worked less than</p> <p style="text-align: right;">46</p>	<p>1 A. H. SUNG</p> <p>2 identification, as of this date.)</p> <p>3 Q. Okay, Mr. Sung, I'm going to ask you to</p> <p>4 take a look at this packet here that's been</p> <p>5 marked as Plaintiff's Exhibit 1. The first page</p> <p>6 is also identified as D001388. Would you agree</p> <p>7 that this document appears to be some type of</p> <p>8 spreadsheet, or at least a chart, including</p> <p>9 employee names, their wages and the amount of</p> <p>10 hours worked per week?</p> <p>11 A. Yeah.</p> <p>12 Q. Is this the document that you were</p> <p>13 referring to that the first manager, whose name</p> <p>14 we cannot remember, created and that you approved</p> <p>15 of?</p> <p>16 A. Yeah, this is document.</p> <p>17 Q. This is the document?</p> <p>18 A. He made the form, this one I remember.</p> <p>19 Q. This particular document looks like it's</p> <p>20 an electronic format, does not look like a</p> <p>21 handwritten document; would you agree?</p> <p>22 A. Yes.</p> <p>23 Q. So do you recall him showing you this</p> <p>24 version of this document in its electronic</p> <p>25 format? Like did he print this out for you --</p> <p style="text-align: right;">48</p>

<p>1 A. H. SUNG</p> <p>2 A. Uh-huh.</p> <p>3 Q. Okay. Was it your understanding that</p> <p>4 this manager created this document for each week</p> <p>5 of work for the employees at 50 Food Corp.?</p> <p>6 A. Yeah, I think so.</p> <p>7 Q. Okay.</p> <p>8 A. Yeah, I didn't check every single week,</p> <p>9 but, you know, I think so.</p> <p>10 Q. Were these documents that were created</p> <p>11 on a weekly basis, were they saved electronically</p> <p>12 in the computer?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know if these documents were also</p> <p>15 saved in paper format?</p> <p>16 A. No.</p> <p>17 Q. Perhaps in a --</p> <p>18 A. No, just in the computer.</p> <p>19 Q. Just in the computer?</p> <p>20 A. Yeah.</p> <p>21 Q. Do you recall whether this manager also</p> <p>22 created any other documents that he used during</p> <p>23 his short period at 50 Food Corp.?</p> <p>24 A. Just for this I think.</p> <p>25 Q. Just this particular document?</p> <p style="text-align: right;">49</p>	<p>1 A. H. SUNG</p> <p>2 like that. So I cannot keep him as a manager</p> <p>3 anymore longer, so.</p> <p>4 Q. Besides forgetting orders and customer</p> <p>5 complaints, were there any other problems that</p> <p>6 you had with this manager?</p> <p>7 A. No, that's the main reason.</p> <p>8 Q. Were there any other reasons?</p> <p>9 A. No, that was the main reason.</p> <p>10 Q. That was the main reason?</p> <p>11 A. Yeah.</p> <p>12 Q. And you said that you fired him?</p> <p>13 A. Yeah.</p> <p>14 Q. If 50 Food Corp. started in about August</p> <p>15 2008, and we think, give or take, this manager</p> <p>16 worked maybe six weeks, when do you think you</p> <p>17 fired him? Would it have been in September?</p> <p>18 A. Probably September.</p> <p>19 Q. Probably around September?</p> <p>20 A. Yeah.</p> <p>21 Q. So after he was fired, who took over --</p> <p>22 A. I took over.</p> <p>23 Q. -- the position of manager?</p> <p>24 A. Myself.</p> <p>25 Q. You took over yourself?</p> <p style="text-align: right;">51</p>
<p>1 A. H. SUNG</p> <p>2 A. Yeah.</p> <p>3 Q. So you only recall reviewing and</p> <p>4 approving this one document?</p> <p>5 A. Yeah.</p> <p>6 Q. So the manager, the first manager again,</p> <p>7 whose name we don't remember, you stated that he</p> <p>8 only worked for about six weeks?</p> <p>9 A. I don't exactly remember.</p> <p>10 Q. Okay. So six weeks give or take; is</p> <p>11 that fair to say?</p> <p>12 A. I think it's much less than six weeks.</p> <p>13 Q. So can you tell me what happened? Why</p> <p>14 did he leave?</p> <p>15 A. First of all, I'm not satisfying his job</p> <p>16 myself.</p> <p>17 Q. Okay.</p> <p>18 A. Actually, I fire him. He made a lot of</p> <p>19 mistake for, you know, at the beginning.</p> <p>20 Q. What types of mistakes did he make?</p> <p>21 A. You know, because he got orders from,</p> <p>22 you know, the customers and he forgot, didn't</p> <p>23 deliver it and we got complaint about that.</p> <p>24 Q. Okay.</p> <p>25 A. It's not one time, maybe several times</p> <p style="text-align: right;">50</p>	<p>1 A. H. SUNG</p> <p>2 A. Yeah.</p> <p>3 Q. How long were you the only person</p> <p>4 managing --</p> <p>5 A. I think --</p> <p>6 Q. -- the business?</p> <p>7 A. About month.</p> <p>8 Q. Excuse me?</p> <p>9 A. Just about month.</p> <p>10 Q. Just about months?</p> <p>11 A. One month.</p> <p>12 Q. One month?</p> <p>13 A. Yeah.</p> <p>14 Q. During that one month where there is no</p> <p>15 other manager and you took over the managerial</p> <p>16 responsibilities, I assume you were involved in</p> <p>17 tracking employees' hours?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall if during that time you</p> <p>20 hired any new employees --</p> <p>21 A. No.</p> <p>22 Q. -- yourself?</p> <p>23 A. No.</p> <p>24 Q. Do you recall during that period whether</p> <p>25 you fired --</p> <p style="text-align: right;">52</p>

<p>1 A. H. SUNG</p> <p>2 A. No.</p> <p>3 Q. -- any employees?</p> <p>4 A. No.</p> <p>5 Q. During that time, did you track</p> <p>6 employees' hours on this document, on the first</p> <p>7 page of Plaintiffs Exhibit 1, that you</p> <p>8 identified as --</p> <p>9 A. Yeah, I think I used the same form even</p> <p>10 when I worked there about four weeks. I used the</p> <p>11 same form for this.</p> <p>12 Q. So you would track when employees</p> <p>13 started --</p> <p>14 A. Actually, you know, our business hour is</p> <p>15 a fixed hour.</p> <p>16 Q. Okay.</p> <p>17 A. Always six o'clock open and four o'clock</p> <p>18 close. So every week, these guys work the same</p> <p>19 hour.</p> <p>20 Q. Okay.</p> <p>21 A. So that's why we get most of guys,</p> <p>22 unless they absent one day or two, they always</p> <p>23 receive same amount of the money.</p> <p>24 Q. Okay.</p> <p>25 A. Because they always work in same hours,</p> <p style="text-align: right;">53</p>	<p>1 A. H. SUNG</p> <p>2 Q. Okay.</p> <p>3 A. But if they absent one day, whole day,</p> <p>4 we take out those one-day wages.</p> <p>5 Q. How would you calculate what one day of</p> <p>6 wages would be?</p> <p>7 A. We go by the -- when we hired, we gave</p> <p>8 him how much per hour how much for time. We</p> <p>9 calculate like that.</p> <p>10 Q. Okay.</p> <p>11 A. So we just take out seven, nine hours,</p> <p>12 they work for 6:00 to 4:00, okay, 9.30 hours. So</p> <p>13 just take nine and a half hours per day.</p> <p>14 Q. Okay.</p> <p>15 A. If they absent, you know, absent.</p> <p>16 Q. So I'm just going to return to the</p> <p>17 period in 2008, when you were working as the</p> <p>18 manager of 50 Food Corp. So were you the only</p> <p>19 individual who was supervising the work of the</p> <p>20 employees during that period?</p> <p>21 A. Just one month, yeah.</p> <p>22 Q. During, yes.</p> <p>23 A. Yeah, just one month.</p> <p>24 Q. Eventually, you hired a manager; is that</p> <p>25 right?</p> <p style="text-align: right;">55</p>
<p>1 A. H. SUNG</p> <p>2 6:00 to 4:00.</p> <p>3 Q. Okay.</p> <p>4 A. And minus 30 minutes for lunch breaks.</p> <p>5 So it's always same.</p> <p>6 Q. But I assume during that month while you</p> <p>7 were the manager, if any individual worked</p> <p>8 perhaps less than the set schedule --</p> <p>9 A. Even though --</p> <p>10 Q. Let me just finish the question so we</p> <p>11 can have a clear record. I'm sorry to interrupt</p> <p>12 you. So my question is during that month that</p> <p>13 you were acting as the sole manager of 50 Food</p> <p>14 Corp. would it be fair to say that if any</p> <p>15 individual worked less than that the set</p> <p>16 schedule, that you would have modified the</p> <p>17 document that we referred to as Plaintiffs</p> <p>18 Exhibit 1?</p> <p>19 A. That I don't remember unless I take a</p> <p>20 look whole thing because that is ten years back.</p> <p>21 Q. Sure.</p> <p>22 A. But usually, what we did is if employee</p> <p>23 arrive the job late or at ten, thirty, one hours,</p> <p>24 we didn't even take out those hour because we</p> <p>25 always gave him the same amount of money.</p> <p style="text-align: right;">54</p>	<p>1 A. H. SUNG</p> <p>2 A. Yeah, that time when I fired first</p> <p>3 employee -- first manager.</p> <p>4 Q. Yes?</p> <p>5 A. I already interview for the Minchul as a</p> <p>6 second manager.</p> <p>7 Q. Okay.</p> <p>8 A. But reason he work -- start work one</p> <p>9 month late because he has plan to wedding.</p> <p>10 Q. Okay.</p> <p>11 A. So he cannot work start work right away.</p> <p>12 Q. Okay.</p> <p>13 A. So after the wedding and then went back</p> <p>14 from the honeymoon, he start job as a manager.</p> <p>15 Q. Got it. Did you interview any other</p> <p>16 potential managers besides Minchul Kim?</p> <p>17 A. No, only Minchul. Because Minchul is my</p> <p>18 church member. I know him long time at the</p> <p>19 church. So that's why I --</p> <p>20 Q. So you met Mr. Kim through church?</p> <p>21 A. Yes.</p> <p>22 Q. What was your understanding of what</p> <p>23 Mr. Kim's business background was that would make</p> <p>24 him --</p> <p>25 A. Because I heard about him a lot of good</p> <p style="text-align: right;">56</p>

<p>1 A. H. SUNG</p> <p>2 stories about him at the church. He was -- I</p> <p>3 think he worked as a worker at the sandwich shop.</p> <p>4 Q. Okay.</p> <p>5 A. The name is Lanes (phonetic) Sandwich</p> <p>6 Shop. And then people around me, yeah, recommend</p> <p>7 him in church, he's a good manager, so.</p> <p>8 Q. So when Mr. Kim started as a manager at</p> <p>9 50 Food Corp., I suppose it would be okay to</p> <p>10 estimate that he began more or less in September</p> <p>11 of 2008, October 2008?</p> <p>12 A. I think it's early October 2008.</p> <p>13 Q. Oh, early October of 2008.</p> <p>14 A. Yeah, yeah.</p> <p>15 Q. Could you tell me a little bit about in</p> <p>16 those first few days, what type of training you</p> <p>17 provided him about how to manage the 50 Food</p> <p>18 Corp. business?</p> <p>19 A. I remember I show him just kind of all</p> <p>20 form, what you need record and how much you need</p> <p>21 pay by hour, how much, you know, kind of just</p> <p>22 basic, you know, bookkeeping things, you know.</p> <p>23 Q. Did you show him any particular document</p> <p>24 to use?</p> <p>25 A. Yeah, I showed him this form.</p> <p style="text-align: right;">57</p>	<p>1 A. H. SUNG</p> <p>2 that, you know, during the first few weeks?</p> <p>3 A. Yes.</p> <p>4 Q. What types of conversations did you have</p> <p>5 with him about this subject?</p> <p>6 A. Just basic things how he can operate the</p> <p>7 business.</p> <p>8 Q. Like what?</p> <p>9 A. Like how he can handle the customer.</p> <p>10 Q. Okay.</p> <p>11 A. How you can handle the employee.</p> <p>12 Q. Okay.</p> <p>13 A. You know, that kind of thing. And then</p> <p>14 how you can control the food quality. That's</p> <p>15 basically most important things in the business.</p> <p>16 Q. Did you instruct him on, you know, how</p> <p>17 to operate the payroll?</p> <p>18 A. Yeah.</p> <p>19 Q. At this time, was the accountant</p> <p>20 involved in assisting with payroll?</p> <p>21 A. Yes.</p> <p>22 Q. So what was Minchul Kim's involvement in</p> <p>23 payroll at this time?</p> <p>24 A. He calculate, you know -- our payroll</p> <p>25 day is Wednesday and Friday. Some employee got</p> <p style="text-align: right;">59</p>
<p>1 A. H. SUNG</p> <p>2 Q. You showed him the document that we've</p> <p>3 identified as Plaintiff's Exhibit 1, the first</p> <p>4 page?</p> <p>5 A. Yeah.</p> <p>6 Q. Did you show him any other documents or</p> <p>7 encouraged him to use any other documents in</p> <p>8 managing the business?</p> <p>9 A. We got the sales record. This is the</p> <p>10 payroll record.</p> <p>11 Q. Yes.</p> <p>12 A. We have a sales record and we have the</p> <p>13 vendor, the food vendor record, purchasing</p> <p>14 record.</p> <p>15 Q. Okay. So you showed him some records</p> <p>16 related to the vendors --</p> <p>17 A. Three.</p> <p>18 Q. -- the sales?</p> <p>19 A. Yeah.</p> <p>20 Q. Got it. Can you tell me what other</p> <p>21 instruction or training you provided to him about</p> <p>22 regarding how to be a manager, how to supervise</p> <p>23 employees? Do you recall giving him advice --</p> <p>24 A. Of course I did --</p> <p>25 Q. Do you recall giving him advice about</p> <p style="text-align: right;">58</p>	<p>1 A. H. SUNG</p> <p>2 payroll Friday, some employee payroll by the</p> <p>3 Wednesday.</p> <p>4 Q. Okay.</p> <p>5 A. So he, you know, counting the money</p> <p>6 because most of guy, we pay by cash.</p> <p>7 Q. Okay.</p> <p>8 A. He have to calculate, you know, counting</p> <p>9 the money.</p> <p>10 Q. Okay.</p> <p>11 A. And then put in envelope and then he</p> <p>12 paying, and then he keep the record for how much</p> <p>13 for the regular hours, how much of overtime and</p> <p>14 he sign it every week.</p> <p>15 Q. Okay.</p> <p>16 A. And he gave to the payroll. And that's</p> <p>17 what he did.</p> <p>18 Q. After Mr. Kim would calculate -- and I</p> <p>19 assume he would use the document that we</p> <p>20 identified as Plaintiff's Exhibit 1 to determine,</p> <p>21 you know, what each individual's hourly rate was,</p> <p>22 right?</p> <p>23 A. Because this is very simple than other</p> <p>24 restaurant business. Because this week, just</p> <p>25 most employee got almost same hours every week,</p> <p style="text-align: right;">60</p>

<p>1 A. H. SUNG</p> <p>2 you know. So he pays one day absent or half day</p> <p>3 absent, we gave him all, you know -- just for</p> <p>4 every 40 hours plus seven point half hours, most</p> <p>5 weeks it's the same amount of hours they worked.</p> <p>6 Q. Okay, got it. I guess my question is</p> <p>7 when Mr. Kim was, you know, calculating how much</p> <p>8 each employee should receive for that week, I</p> <p>9 assume he consulted this document that we've</p> <p>10 identified as Plaintiff's Exhibit 1. And then</p> <p>11 what, if any, communication did he have with the</p> <p>12 accountant who you say was also involved in</p> <p>13 payroll?</p> <p>14 A. Accountant, actually, he only calculate</p> <p>15 for employee paying by the check.</p> <p>16 Q. Oh, okay.</p> <p>17 A. Who paid the taxes.</p> <p>18 Q. Okay.</p> <p>19 A. So even I got the payroll from 50 Food</p> <p>20 Corp. for myself. So Minchul and one more, about</p> <p>21 four employees, got the check paid. They were</p> <p>22 know employee don't have cash. They were</p> <p>23 W. They were paid by check. They could not</p> <p>24 ac. They were paid by check. They could not</p> <p>25 be paid by check. We have to pay the cash.</p> <p style="text-align: right;">61</p>	<p>1 A. H. SUNG</p> <p>2 A. Yeah.</p> <p>3 Q. So it sounds like perhaps this</p> <p>4 accountant was not really involved in the weekly</p> <p>5 payroll; is that correct?</p> <p>6 A. No.</p> <p>7 Q. He was just involved in knowing how</p> <p>8 much --</p> <p>9 A. He --</p> <p>10 Q. Let me just finish my question so we</p> <p>11 could have a clear record. So is it correct to</p> <p>12 say that this accountant was not involved in</p> <p>13 preparing the weekly payroll even for the</p> <p>14 individuals who were paid by check? He wasn't</p> <p>15 involved in cutting the checks? He wasn't</p> <p>16 involved in calculating --</p> <p>17 A. No, the payroll, we made the payroll</p> <p>18 ourselves.</p> <p>19 Q. Got it.</p> <p>20 A. Minchul made the --</p> <p>21 Q. Okay.</p> <p>22 A. Because he knows how much tax we have to</p> <p>23 cut it out. So he only did quarterly tax report</p> <p>24 to the government IRS and state for, you know,</p> <p>25 payroll taxes.</p> <p style="text-align: right;">63</p>
<p>1 A. H. SUNG</p> <p>2 So we only report our accountant to once</p> <p>3 a year when we do the corporate tax return so we</p> <p>4 paid this amount of money as a cash pay for the</p> <p>5 employee for the payroll.</p> <p>6 Q. So if I understand correctly, it sounds</p> <p>7 like the accountant would only be in charge of</p> <p>8 cutting the checks for the few individuals,</p> <p>9 perhaps around four --</p> <p>10 A. Right.</p> <p>11 Q. -- who were paid by check?</p> <p>12 A. Yeah, but once a year, he knows how much</p> <p>13 payroll we pay.</p> <p>14 Q. Payroll taxes you paid?</p> <p>15 A. No, no, no. How much -- because we have</p> <p>16 -- the payroll is expense of the company, right?</p> <p>17 So he have to know about how much cash payroll we</p> <p>18 made. (sic)</p> <p>19 Q. Got it.</p> <p>20 A. So we report to our accountant to that</p> <p>21 amount.</p> <p>22 Q. Who would cut the checks for the</p> <p>23 individual who were paid by check?</p> <p>24 A. Minchul.</p> <p>25 Q. Minchul?</p> <p style="text-align: right;">62</p>	<p>1 A. H. SUNG</p> <p>2 Q. So the accountant was only responsible</p> <p>3 for reporting the quarterly taxes?</p> <p>4 A. That's correct.</p> <p>5 Q. So Minchul Kim was in charge of</p> <p>6 calculating how much money --</p> <p>7 A. No, he didn't even calculate because he</p> <p>8 -- we know how much every week we have to cut it</p> <p>9 because at the beginning of the year, that's</p> <p>10 accountant tell us how much for taxes we had for</p> <p>11 the manager then chef and other one.</p> <p>12 Q. Can you explain that to me? You're</p> <p>13 telling me the accountant told you how much what?</p> <p>14 A. How much with the tax we have to deduct.</p> <p>15 Q. Oh, okay. So at the beginning of the</p> <p>16 year he would tell you for the individuals who</p> <p>17 are paid by check, here's the amount that you</p> <p>18 need to withhold from their weekly salary?</p> <p>19 A. That's correct.</p> <p>20 Q. Did Minchul Kim ever keep records of,</p> <p>21 you know, the amount that was withheld for the</p> <p>22 individuals who were paid by check?</p> <p>23 A. No, because he only have this one. But</p> <p>24 accountant knows about how much the tax that</p> <p>25 needs to be deducted.</p> <p style="text-align: right;">64</p>

<p>1 A. H. SUNG</p> <p>2 Q. I guess my question is are there any</p> <p>3 documents that show the weekly amounts that were</p> <p>4 withheld for the individuals who were paid by the</p> <p>5 books?</p> <p>6 A. Accountant Mr. Hong has it.</p> <p>7 Q. Mr. Hong has it, okay. During Mr. Kim's</p> <p>8 first few weeks or perhaps first few months of</p> <p>9 the business, were you more involved in the</p> <p>10 business than you are now -- or let me withdraw</p> <p>11 that question.</p> <p>12 Could you describe to me, let's say, the</p> <p>13 first three months that Mr. Kim was the manager</p> <p>14 at Silo Cafe, can you tell me a little bit about</p> <p>15 what your involvement was at Silo Cafe?</p> <p>16 A. I think I busy more than now at that</p> <p>17 point, you know, but I don't go there every day.</p> <p>18 Q. Okay.</p> <p>19 A. Maybe I go there about at that point</p> <p>20 maybe once a week or twice a week, you know. It</p> <p>21 would depend on I guess.</p> <p>22 Q. So when Mr. Kim was hired to run the</p> <p>23 business to be your manager, you would only visit</p> <p>24 the 805 Third Avenue location only once or twice</p> <p>25 a week?</p> <p>65</p>	<p>1 A. H. SUNG</p> <p>2 Q. Do you recall reviewing any other type</p> <p>3 of document referring to --</p> <p>4 A. No.</p> <p>5 Q. -- payroll or hours worked?</p> <p>6 A. No.</p> <p>7 Q. Of any employees?</p> <p>8 A. Just this.</p> <p>9 Q. Do you know if at that time, again,</p> <p>10 we're just speaking about, you know, maybe first</p> <p>11 two or three months when Mr. Minchul Kim started</p> <p>12 as the manager, do you recall seeing that he was</p> <p>13 using any other type of document either to track</p> <p>14 the employees' hours or to document the pay that</p> <p>15 employees received on a weekly basis?</p> <p>16 A. I don't remember.</p> <p>17 Q. So right now it would be correct to say</p> <p>18 that you only recall perhaps reviewing just this</p> <p>19 one document?</p> <p>20 A. Actually, I just look at the total</p> <p>21 amount. I don't even look at this part.</p> <p>22 Important thing is how much he using for the</p> <p>23 payroll.</p> <p>24 Q. Sounds like you were most concerned to</p> <p>25 know --</p> <p>67</p>
<p>1 A. H. SUNG</p> <p>2 A. Uh-huh.</p> <p>3 Q. Can you tell me a little bit about the</p> <p>4 purpose of your visits and what you did in those</p> <p>5 visits? And again, we're talking about the first</p> <p>6 few months after Mr. Kim was hired.</p> <p>7 A. I just watching how they doing, if</p> <p>8 they're doing good, if something wrong. I most</p> <p>9 check that.</p> <p>10 Q. When you say you were watching, were you</p> <p>11 actually watching the employees work --</p> <p>12 A. Yeah, yeah.</p> <p>13 Q. -- and the business being conducted?</p> <p>14 A. How they handled the customers and that</p> <p>15 kind of thing.</p> <p>16 Q. Did you also review any records?</p> <p>17 A. Yeah, yes.</p> <p>18 Q. What types of records did you review?</p> <p>19 A. How much they paid the payroll, total</p> <p>20 amount of payroll, how much he using, what was</p> <p>21 the sales amount, kind of things. Of course I</p> <p>22 look at it.</p> <p>23 Q. When you say payroll document, are you</p> <p>24 referring to this document? (Indicating)</p> <p>25 A. Yeah.</p> <p>66</p>	<p>1 A. H. SUNG</p> <p>2 A. Total amount.</p> <p>3 Q. You were most concerned about the</p> <p>4 payroll amount --</p> <p>5 A. Yeah.</p> <p>6 Q. -- the total amount on a weekly basis?</p> <p>7 A. That's correct.</p> <p>8 Q. To clarify my specific question, in the</p> <p>9 first few months of Mr. Kim's employment, you</p> <p>10 recall just reviewing this one document?</p> <p>11 A. Yes.</p> <p>12 Q. So no other employment records that you</p> <p>13 recall reviewing?</p> <p>14 A. No.</p> <p>15 Q. So did there come a time that you</p> <p>16 started visiting the business less after the</p> <p>17 first few months of Mr. Kim's employment?</p> <p>18 A. What's mean?</p> <p>19 Q. So I think you testified earlier that</p> <p>20 you maybe would visit the business more in that</p> <p>21 time when Mr. Kim was first hired then perhaps</p> <p>22 you visit now?</p> <p>23 A. Uh-huh.</p> <p>24 Q. When did that change? When did you</p> <p>25 become -- when did you start visiting less, the</p> <p>68</p>

<p>1 A. H. SUNG</p> <p>2 business?</p> <p>3 A. Okay. So maybe I visit few than the</p> <p>4 beginning, you know. Sometimes when I have -- I</p> <p>5 go -- sometimes I go every day. Sometimes I</p> <p>6 didn't even go one month, you know.</p> <p>7 Q. Yes.</p> <p>8 A. So like that.</p> <p>9 Q. So I understand that maybe your visits</p> <p>10 are sporadic --</p> <p>11 A. That's correct.</p> <p>12 Q. -- when I say sporadic, I mean that</p> <p>13 there's not a set visiting schedule --</p> <p>14 A. No.</p> <p>15 Q. -- you weren't there every day?</p> <p>16 A. There's no fixed schedule.</p> <p>17 Q. Why don't you tell me a little bit about</p> <p>18 your communications with Mr. Kim. You know, how</p> <p>19 often -- you may not visit the store, but how</p> <p>20 often would you say you communicate with Mr. Kim</p> <p>21 in general about 50 Food Corp., how it's doing?</p> <p>22 I assume as the owner you have an interest in</p> <p>23 this; is that right?</p> <p>24 A. At least once a week.</p> <p>25 Q. Once a week. And if you don't visit the</p> <p style="text-align: right;">69</p>	<p>1 A. H. SUNG</p> <p>2 Q. So both you and Mr. Kim had an</p> <p>3 understanding that you would need to approve any</p> <p>4 raises that were provided to employees; is that</p> <p>5 right?</p> <p>6 A. Yeah.</p> <p>7 Q. Did Mr. Kim understand that you needed</p> <p>8 to approve any raises in pay rates because you</p> <p>9 had told him at the outset that --</p> <p>10 A. Yeah, he needed my approval for the</p> <p>11 payroll raise.</p> <p>12 Q. What other types of things would he need</p> <p>13 your approval for?</p> <p>14 A. When he firing and hiring.</p> <p>15 Q. Okay.</p> <p>16 A. He need another guy, he call me he need</p> <p>17 -- he wants hire another extra person and it's</p> <p>18 okay or not. So he need my approval for that.</p> <p>19 Q. Okay.</p> <p>20 A. So sometimes he want to fire the people,</p> <p>21 he asked me, you know, and we discuss about that</p> <p>22 too, yeah.</p> <p>23 Q. How often do you recall maybe having</p> <p>24 discussions about either hiring or firing or pay</p> <p>25 raises?</p> <p style="text-align: right;">71</p>
<p>1 A. H. SUNG</p> <p>2 store in person, are you speaking with Mr. Kim</p> <p>3 over the phone?</p> <p>4 A. Over the phone.</p> <p>5 Q. Can you tell me a little bit about, you</p> <p>6 know, the most important things that you want to</p> <p>7 speak with Mr. Kim about when you speak with him</p> <p>8 once a week?</p> <p>9 A. Uh-huh.</p> <p>10 Q. What do you speak about?</p> <p>11 A. How's the sales, everything is okay kind</p> <p>12 of thing, very simple.</p> <p>13 Q. Can you recall ever discussing with</p> <p>14 Mr. Kim maybe pay rates, maybe if he wanted to</p> <p>15 give somebody a raise?</p> <p>16 A. Yeah, sometimes he call me --</p> <p>17 Q. Yes.</p> <p>18 A. -- he want to raise somebody --</p> <p>19 Q. Yes.</p> <p>20 A. -- to, you know, 50 cents per hour and</p> <p>21 then he need to approve with me. So I approve</p> <p>22 it.</p> <p>23 Q. Okay.</p> <p>24 A. That is he always call me when he raise</p> <p>25 the payroll.</p> <p style="text-align: right;">70</p>	<p>1 A. H. SUNG</p> <p>2 A. Maybe about two, three times a year.</p> <p>3 Q. Okay.</p> <p>4 A. Less, yeah, it's all depending.</p> <p>5 Q. You probably know this, but we deposed</p> <p>6 Mr. Kim last week.</p> <p>7 A. Yeah.</p> <p>8 Q. During his deposition, he recounted some</p> <p>9 struggles that he had as a manager in managing</p> <p>10 employees.</p> <p>11 A. Yes. I heard that a lot of times.</p> <p>12 Q. Do you recall having conversations with</p> <p>13 Mr. Kim about the challenges he had as a manager</p> <p>14 in supervising employees?</p> <p>15 A. Always when I'm have a meeting with him.</p> <p>16 Q. Yes?</p> <p>17 A. When I visit the store, I always told</p> <p>18 him because I heard about he has skill as a</p> <p>19 manager from other people's that, you know -- but</p> <p>20 he's better on his people, but he's not really</p> <p>21 strong for handle the people, the workers.</p> <p>22 Q. Yes.</p> <p>23 A. So I always give him some consult how he</p> <p>24 can handle the peoples, your employee.</p> <p>25 Q. So you would give him some advice --</p> <p style="text-align: right;">72</p>

<p>1 A. H. SUNG</p> <p>2 A. Yeah.</p> <p>3 Q. -- as to how to handle the employees?</p> <p>4 A. Yeah.</p> <p>5 Q. Can you think of any particular instance</p> <p>6 or any particular type of interaction?</p> <p>7 A. Just one guy, like especially the Felix,</p> <p>8 his attitude is so bad.</p> <p>9 Q. Let me just stop you for one second.</p> <p>10 Are you referring to Plaintiff Felix Galindo?</p> <p>11 A. He worked from the beginning until now.</p> <p>12 But his attitude, he not listen the manager's</p> <p>13 order. His attitude to customer is very bad.</p> <p>14 Q. Okay.</p> <p>15 A. And happened last week -- I think it's</p> <p>16 about two weeks ago when I visit, he used the</p> <p>17 cell phone on front of the customer and then</p> <p>18 making sandwich. So I ask him, I ask Minchul, he</p> <p>19 is always doing like that, and he say yes. So</p> <p>20 why you don't stop him to not using the hand</p> <p>21 phone in front of customer?</p> <p>22 Q. Yes.</p> <p>23 A. But he cannot control him.</p> <p>24 Q. Okay.</p> <p>25 A. So there's a lot of problem there.</p> <p style="text-align: right;">73</p>	<p>1 A. H. SUNG</p> <p>2 sandwiches, I think you said -- I think you</p> <p>3 testified that that's something that happened</p> <p>4 recently that you observed; is that right?</p> <p>5 A. Yeah, but I ask him, he already did it,</p> <p>6 he did it --</p> <p>7 Q. Oh, okay.</p> <p>8 A. He said he always do that.</p> <p>9 Q. Did you provide any advice or guidance</p> <p>10 to Mr. Kim about how to deal with this problem?</p> <p>11 A. Yes, I did. If he did it one more time,</p> <p>12 prepare the warning paper, the warning notice and</p> <p>13 then get the signed from Felix.</p> <p>14 Q. Okay.</p> <p>15 A. And if he did one more time, just fire</p> <p>16 him.</p> <p>17 Q. Were there any -- did you say to</p> <p>18 Mr. Kim, oh, look, here's an example of a warning</p> <p>19 notice or this is what a warning notice should</p> <p>20 look like?</p> <p>21 A. Yeah, I told him you can find it in the</p> <p>22 Google.</p> <p>23 Q. Got it. Besides phone conversations</p> <p>24 with Mr. Kim and your visits to 805 Third Avenue</p> <p>25 where you would review paperwork, would you</p> <p style="text-align: right;">75</p>
<p>1 A. H. SUNG</p> <p>2 Q. So in that particular incident that you</p> <p>3 just described involving the plaintiff,</p> <p>4 Mr. Galindo, using his cell phone while</p> <p>5 working --</p> <p>6 A. Not only that. Especially Mr. Felix --</p> <p>7 because he work -- he start work actually Silo</p> <p>8 Cafe 32nd Street, you know. And then he did a</p> <p>9 lot of bad things there. That's I moved him to</p> <p>10 the Silo 2, the 50 Street.</p> <p>11 Because when Felix worked at the Silo</p> <p>12 32nd, one girl went to the bathroom and Felix</p> <p>13 went to the boiler room that is like next door of</p> <p>14 the bathroom. He punched a hole through the wall</p> <p>15 and he watching.</p> <p>16 Q. Okay.</p> <p>17 A. You know. And then we, next day, I move</p> <p>18 him to the 50 Street because this girl doesn't</p> <p>19 want to work with him.</p> <p>20 Q. Okay.</p> <p>21 A. You know. So he -- but that kind of</p> <p>22 work, he's very uncontrollable employee for</p> <p>23 Minchul. So that's it.</p> <p>24 Q. So this incident that you described with</p> <p>25 Mr. Galindo using the phone while he was making</p> <p style="text-align: right;">74</p>	<p>1 A. H. SUNG</p> <p>2 interact with anyone else either in person or</p> <p>3 over the phone related to the business at 50 Food</p> <p>4 Corp.? I suppose I'm thinking of maybe the chef</p> <p>5 or any of the employees.</p> <p>6 A. Yeah, I always have meeting with the</p> <p>7 chef.</p> <p>8 Q. Okay.</p> <p>9 A. You know, I check the food quality</p> <p>10 always, you know, whenever I visit there.</p> <p>11 Q. Okay.</p> <p>12 A. I must tell them what you need to</p> <p>13 improve, what you need to fix it, you know.</p> <p>14 Q. During your visits to the cafe, would</p> <p>15 you interact at all with any of the employees?</p> <p>16 A. I just watching during the business hour</p> <p>17 and then my most concern is how they handle the</p> <p>18 customer.</p> <p>19 Q. Okay.</p> <p>20 A. You know and then how they make the</p> <p>21 food.</p> <p>22 Q. How would you determine how they were</p> <p>23 interacting with customers and how they did the</p> <p>24 food?</p> <p>25 A. For the customer service --</p> <p style="text-align: right;">76</p>

<p>1 A. H. SUNG</p> <p>2 Q. Okay.</p> <p>3 A. -- I just check they smiling in front of</p> <p>4 the customer or how they reacting for the</p> <p>5 customer questions kind of things. And sometimes</p> <p>6 the Felix has fighting -- fight with the employee</p> <p>7 next with him front of customer. So I even</p> <p>8 called the police. So those two guys went to the</p> <p>9 police with the manager, but in that point,</p> <p>10 police say if we report it, the Felix can be</p> <p>11 arrested.</p> <p>12 Q. Okay.</p> <p>13 A. So manager call me do I need the report?</p> <p>14 So I said don't do it because I don't want the</p> <p>15 Felix arrested.</p> <p>16 Q. I'm sorry, you don't want Felix what?</p> <p>17 A. Arrested.</p> <p>18 Q. You did not want Felix arrested?</p> <p>19 A. Yeah.</p> <p>20 Q. Why didn't you want Felix arrested?</p> <p>21 A. Because I don't want. Because it can</p> <p>22 happen. But we got warning paper for him for</p> <p>23 both those cases. So he got first notice</p> <p>24 already.</p> <p>25 Q. When did he receive his first warning</p> <p style="text-align: right;">77</p>	<p>1 A. H. SUNG</p> <p>2 Q. So you were always happy with the way</p> <p>3 employees interacted with customers?</p> <p>4 A. Yeah, most of them they were okay,</p> <p>5 besides Felix, actually, you know.</p> <p>6 Q. Do you recall ever speaking to Mr. Kim</p> <p>7 about how the employees were --</p> <p>8 A. Oh, you know, I always talk about that.</p> <p>9 Q. Did you ever give him, besides</p> <p>10 Mr. Galindo, I know you've had a good amount to</p> <p>11 say about Mr. Galindo, do you recall speaking</p> <p>12 with Mr. Kim about any other employee and how</p> <p>13 they were interacting with customers?</p> <p>14 A. I don't think so.</p> <p>15 Q. You don't think so?</p> <p>16 A. I don't remember actually.</p> <p>17 Q. You also indicated that when you would</p> <p>18 visit 50 Food Corp. that you would observe to</p> <p>19 make sure that the employees were doing their job</p> <p>20 correctly?</p> <p>21 A. Yeah.</p> <p>22 Q. And, you know, let's put aside how the</p> <p>23 employees were interacting with customers.</p> <p>24 A. Yeah.</p> <p>25 Q. What kind of things were you looking for</p> <p style="text-align: right;">79</p>
<p>1 A. H. SUNG</p> <p>2 notice?</p> <p>3 A. That's about, I believe it's about three</p> <p>4 months ago. Not quite long ago.</p> <p>5 Q. Okay.</p> <p>6 A. He had grabbed the knife when he</p> <p>7 fighting with the other employee front of</p> <p>8 customer. That's why I ask him to call the</p> <p>9 police.</p> <p>10 Q. When you say -- You advised Minchul Kim</p> <p>11 to call the police?</p> <p>12 A. Yes.</p> <p>13 Q. Were you there during that time?</p> <p>14 A. No, he called me.</p> <p>15 Q. So besides the incident that you just</p> <p>16 described with Mr. Galindo and the knife, were</p> <p>17 there any -- you know, during your years visiting</p> <p>18 50 Food Corp. and observing how the employees</p> <p>19 would interact with customers, can you recall</p> <p>20 other instances where you were not happy with a</p> <p>21 particular employee --</p> <p>22 A. No.</p> <p>23 Q. -- and how they were interacting with</p> <p>24 customers?</p> <p>25 A. No.</p> <p style="text-align: right;">78</p>	<p>1 A. H. SUNG</p> <p>2 to make sure that the employees were doing their</p> <p>3 job correctly?</p> <p>4 A. Most important thing is how they respond</p> <p>5 to the customer, how they speak the customer.</p> <p>6 Q. Okay.</p> <p>7 A. You know, they smile or not smile.</p> <p>8 Q. Okay.</p> <p>9 A. And the second thing is how they made</p> <p>10 the sandwiches.</p> <p>11 Q. Okay.</p> <p>12 A. It's a good nice-colored sandwich or</p> <p>13 not. That's all, two things.</p> <p>14 Q. Did you ever have any feedback to report</p> <p>15 to Mr. Kim about --</p> <p>16 A. Yeah.</p> <p>17 Q. What kind of feedback do you recall?</p> <p>18 A. Like those sandwiches, we have to add</p> <p>19 more ham.</p> <p>20 Q. Okay.</p> <p>21 A. You know, kind of things.</p> <p>22 Q. Got it.</p> <p>23 A. We got to use the better quality bread</p> <p>24 kind of stuff, you know.</p> <p>25 Q. You indicated earlier that you, in the</p> <p style="text-align: right;">80</p>

<p>1 A. H. SUNG</p> <p>2 past, have advised Mr. Kim to write up an</p> <p>3 employee, specifically Mr. Galindo. Can you</p> <p>4 recall any other conversations you had with</p> <p>5 Mr. Kim about disciplining any other employee</p> <p>6 besides Mr. Galindo?</p> <p>7 A. Yeah.</p> <p>8 Q. What other individuals can you remember?</p> <p>9 A. I don't remember name, but whenever I go</p> <p>10 there someone -- you know, I have to talk about</p> <p>11 some employee, I call the manager and then he</p> <p>12 need to improve his work, whatever.</p> <p>13 Q. So during those instances you would --</p> <p>14 A. But not many.</p> <p>15 Q. Okay. It sounds like maybe Mr. Galindo</p> <p>16 was one of the few employees that you had</p> <p>17 problems with?</p> <p>18 A. Yeah.</p> <p>19 Q. But there were other employees besides</p> <p>20 Mr. Galindo who you observed --</p> <p>21 A. Not many with the problems.</p> <p>22 Q. But is it correct to say that you would</p> <p>23 have conversations with Mr. Kim regarding other</p> <p>24 employees in the past whose conduct you were not</p> <p>25 happy with?</p> <p style="text-align: right;">81</p>	<p>1 A. H. SUNG</p> <p>2 in the locker, but he didn't listen to my word</p> <p>3 also. Because I call I think this morning how</p> <p>4 Felix doing, he not using the phone. He say he</p> <p>5 still using the phone.</p> <p>6 Q. So you called Mr. Kim this morning?</p> <p>7 A. Yeah.</p> <p>8 Q. To check in on Felix?</p> <p>9 A. Yeah, he still using phone, but less.</p> <p>10 Q. Did you tell Mr. Kim anything? Did you</p> <p>11 give him any instructions about what to do?</p> <p>12 A. I told him if you saw one more time,</p> <p>13 give him the warning paper and then fire him.</p> <p>14 Q. So would you agree that as the owner of</p> <p>15 50 Food Corp., that you, even though you're not</p> <p>16 the direct supervisor and you're not there every</p> <p>17 day, that as the owner, it's your responsibility</p> <p>18 and you have the authority to instruct Mr. Kim to</p> <p>19 fire and discipline employees when they're not --</p> <p>20 A. Yes.</p> <p>21 Q. -- when they're not behaving correctly?</p> <p>22 A. That's right. But most of them, we give</p> <p>23 them two times notice.</p> <p>24 Q. I'm sorry, could you say that again?</p> <p>25 A. Before we fire him, we got three times</p> <p style="text-align: right;">83</p>
<p>1 A. H. SUNG</p> <p>2 A. I don't remember that.</p> <p>3 Q. You don't remember. So only</p> <p>4 Mr. Galindo?</p> <p>5 A. No, I just because he just still working</p> <p>6 there.</p> <p>7 Q. So the only employee you remember</p> <p>8 speaking to Mr. Kim about is Mr. Galindo?</p> <p>9 A. Yeah, because he's still working there.</p> <p>10 Q. Yes.</p> <p>11 A. Because he have problems for recently.</p> <p>12 Q. Okay.</p> <p>13 A. Even two weeks ago, he have a problem</p> <p>14 with me. He used a phone in front of customer.</p> <p>15 So I tell him you got to put your phone to the</p> <p>16 locker, but he didn't even put it.</p> <p>17 Q. Oh, so you told him to put his phone in</p> <p>18 the locker?</p> <p>19 A. Yeah, I saw him he used the phone when I</p> <p>20 visit recently. I saw them. So I go there and</p> <p>21 you got to stop using the phone front of. He put</p> <p>22 his cell phone like this and then cut sandwich</p> <p>23 like that. (Indicating)</p> <p>24 Q. Oh boy.</p> <p>25 A. So you got to put it back to your phone</p> <p style="text-align: right;">82</p>	<p>1 A. H. SUNG</p> <p>2 the warning notice.</p> <p>3 Q. Is that a policy of the company?</p> <p>4 A. No, just I just told them. Otherwise,</p> <p>5 we got the problem. I know that.</p> <p>6 Q. You told Mr. Kim that?</p> <p>7 A. Yeah, prepare the warning paper before</p> <p>8 we fire him.</p> <p>9 Q. And I guess my question is was this</p> <p>10 process of having three warnings before you fire</p> <p>11 somebody, is that a process that you just made up</p> <p>12 to deal with Mr. Galindo or is that a process or</p> <p>13 a policy --</p> <p>14 A. No.</p> <p>15 Q. -- that you followed in the past as</p> <p>16 well?</p> <p>17 A. Policy about my past as well.</p> <p>18 Q. In the past as well. Is this a policy</p> <p>19 that has just been in your head and spoken about</p> <p>20 or is it something that has been --</p> <p>21 A. No. I consulted with my attorney about</p> <p>22 how you handle the when we firing.</p> <p>23 Q. As a result of your conversation with</p> <p>24 your attorney about how to deal with problem</p> <p>25 employees --</p> <p style="text-align: right;">84</p>

<p>1 A. H. SUNG</p> <p>2 A. Yes.</p> <p>3 Q. -- did you ever write down a policy that</p> <p>4 was distributed to employees?</p> <p>5 A. No, we just -- first, I didn't even use</p> <p>6 any time at all, except Felix.</p> <p>7 Q. Felix is your first?</p> <p>8 A. Felix is the first case using the</p> <p>9 warning letter.</p> <p>10 Q. First and only case?</p> <p>11 A. Yeah.</p> <p>12 Q. Prior to this lawsuit, were you familiar</p> <p>13 with the names of the plaintiffs in this case?</p> <p>14 Were you familiar with those individuals?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Delfino Lopez?</p> <p>17 A. Yeah.</p> <p>18 Q. Felix Galindo?</p> <p>19 A. Yes.</p> <p>20 Q. And Esteban Perez?</p> <p>21 A. Yeah, I know those guys.</p> <p>22 Q. You know those guys?</p> <p>23 A. Yeah.</p> <p>24 Q. How did you know those guys?</p> <p>25 A. Delfino worked since the beginning hired</p> <p style="text-align: right;">85</p>	<p>1 A. H. SUNG</p> <p>2 A. I heard they were good.</p> <p>3 Q. You heard from Mr. Kim that they were</p> <p>4 good?</p> <p>5 A. Yeah, from Mr. Kim.</p> <p>6 Q. Do you recall what kinds of things</p> <p>7 Mr. Kim would say about Mr. Lopez and Mr. Perez?</p> <p>8 A. I didn't hear any complaint about those</p> <p>9 two guys from Mr. Kim.</p> <p>10 Q. Did you hear anything at all about them?</p> <p>11 A. No.</p> <p>12 Q. So can you explain to me just the</p> <p>13 general operation of Silo Cafe? I understand</p> <p>14 that there's a buffet; is that right?</p> <p>15 A. Not buffet, a deli.</p> <p>16 Q. A deli. I've been there once and I've</p> <p>17 seen pictures and I understand that there's like</p> <p>18 a --</p> <p>19 A. Salad bar.</p> <p>20 Q. There's a salad bar?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. So customers can come and they</p> <p>23 can serve themselves salad?</p> <p>24 A. Uh-huh.</p> <p>25 Q. And I understand that there are also</p> <p style="text-align: right;">87</p>
<p>1 A. H. SUNG</p> <p>2 by the first manager. Felix, as I told you, he</p> <p>3 worked in 32nd Street location.</p> <p>4 Q. Okay.</p> <p>5 A. And he has a problem, right? He punched</p> <p>6 the hole and looking for the girls.</p> <p>7 Q. Yes.</p> <p>8 A. And I moved him.</p> <p>9 Q. You moved him?</p> <p>10 A. I moved him to the 50 Street. And</p> <p>11 Esteban is hired by Minchul.</p> <p>12 Q. Esteban was hired by Minchul Kim?</p> <p>13 A. Yeah.</p> <p>14 Q. Got it. Besides, you know, knowing that</p> <p>15 these individuals were employees of 50 Food Corp.</p> <p>16 and also I understand that, you know, Felix</p> <p>17 Galindo perhaps was well known to you because he</p> <p>18 often had some problems at the business, do you</p> <p>19 recall ever having any interactions with Delfino</p> <p>20 Lopez or Esteban Perez personally?</p> <p>21 A. No, we just say hello.</p> <p>22 Q. Besides greeting them, do you recall</p> <p>23 interacting with them?</p> <p>24 A. No, nothing.</p> <p>25 Q. Do you recall --</p> <p style="text-align: right;">86</p>	<p>1 A. H. SUNG</p> <p>2 stations?</p> <p>3 A. Yeah.</p> <p>4 Q. Where you can order a sandwich and other</p> <p>5 types of food items?</p> <p>6 A. Yeah.</p> <p>7 Q. Is there an area where customers can sit</p> <p>8 and eat?</p> <p>9 A. Yeah.</p> <p>10 Q. Do you guys have a delivery service?</p> <p>11 A. Yes, we do.</p> <p>12 Q. So individuals can call in and have</p> <p>13 their food delivered?</p> <p>14 A. Yes.</p> <p>15 Q. So who's in charge of doing the</p> <p>16 delivery?</p> <p>17 A. Minchul.</p> <p>18 Q. Minchul?</p> <p>19 A. Yeah.</p> <p>20 Q. The manager is in charge of doing the</p> <p>21 delivery?</p> <p>22 A. No, no, we have a delivery guy.</p> <p>23 Q. Oh, you have a delivery guy. Is the</p> <p>24 delivery guy's only job to do delivery or does</p> <p>25 he do something else?</p> <p style="text-align: right;">88</p>

<p>1 A. H. SUNG</p> <p>2 A. No, if he didn't have the job for</p> <p>3 delivery, he do some other work at the store.</p> <p>4 Q. Who is in charge of doing delivery right</p> <p>5 now?</p> <p>6 A. I don't know.</p> <p>7 Q. In the past, do you recall if any of the</p> <p>8 plaintiffs in this lawsuit were involved in doing</p> <p>9 delivery?</p> <p>10 A. They don't do delivery.</p> <p>11 Q. Typically, how many employees are in</p> <p>12 charge of doing delivery?</p> <p>13 A. Just one guy I think.</p> <p>14 Q. Just one guy?</p> <p>15 A. Yeah, we don't have that much delivery</p> <p>16 and orders.</p> <p>17 Q. If you had to estimate, how much</p> <p>18 deliveries are done on --</p> <p>19 A. I don't know.</p> <p>20 Q. More than ten?</p> <p>21 A. I don't know.</p> <p>22 Q. Less than ten maybe?</p> <p>23 A. I don't know.</p> <p>24 Q. The individual who does deliveries, that</p> <p>25 person is typically assigned to a specific area</p> <p style="text-align: right;">89</p>	<p>1 A. H. SUNG</p> <p>2 Because I assume that individual receives tips;</p> <p>3 is that right?</p> <p>4 A. Only thing I know, Minchul handled by</p> <p>5 the law. He knows, you know.</p> <p>6 Q. So the only thing you know is that</p> <p>7 Minchul --</p> <p>8 A. I don't know the exact number, but we do</p> <p>9 right about that.</p> <p>10 Q. And you're confident that you're doing</p> <p>11 right by that because you reviewed paperwork or</p> <p>12 because you discussed this with Mr. Kim</p> <p>13 specifically, or why are you confident that it's</p> <p>14 been done correctly?</p> <p>15 A. Because the tip the employee, we</p> <p>16 basically pay some amount plus tip that have to</p> <p>17 be over the minimum wage.</p> <p>18 Q. Okay.</p> <p>19 A. That I know that.</p> <p>20 Q. You know that?</p> <p>21 A. That's right. If those amount is less</p> <p>22 than minimum wage, we have to pay.</p> <p>23 Q. Got it.</p> <p>24 A. I know that.</p> <p>25 Q. I guess my question is, I understand</p> <p style="text-align: right;">91</p>
<p>1 A. H. SUNG</p> <p>2 in the deli if he's not doing delivery?</p> <p>3 A. I don't know how the Minchul use him.</p> <p>4 Q. Do you know how Minchul Kim determines</p> <p>5 who does the delivery?</p> <p>6 A. Yeah, he knows probably.</p> <p>7 Q. He knows. And it's usually just one</p> <p>8 person?</p> <p>9 A. Yeah, I think so. I don't know he keep</p> <p>10 delivering the food or not. I don't know. I</p> <p>11 need to check that.</p> <p>12 Q. Has there been a delivery service since</p> <p>13 the beginning --</p> <p>14 A. Yeah.</p> <p>15 Q. -- of the company?</p> <p>16 A. Yeah.</p> <p>17 Q. Do you have any knowledge as to how the</p> <p>18 delivery person is paid?</p> <p>19 A. I don't know, but he paid per whatever</p> <p>20 basic payroll plus tips.</p> <p>21 Q. Plus tips?</p> <p>22 A. Yeah, but I think it's over minimum</p> <p>23 wage.</p> <p>24 Q. Do you recall whether a tip credit is</p> <p>25 taken for the individual who does deliveries?</p> <p style="text-align: right;">90</p>	<p>1 A. H. SUNG</p> <p>2 that you understand maybe what the rules are</p> <p>3 regarding tipped employee, but how are you</p> <p>4 confident that Mr. Kim knows that? Is it because</p> <p>5 you had a discussion? You instructed him?</p> <p>6 A. I instructed him.</p> <p>7 Q. So you instructed him to do this when?</p> <p>8 Do you recall?</p> <p>9 A. From the beginning.</p> <p>10 Q. From the beginning?</p> <p>11 A. Yeah.</p> <p>12 Q. So I assume that you had a conversation</p> <p>13 with him about payroll --</p> <p>14 A. Yeah.</p> <p>15 Q. -- and about what the obligations are</p> <p>16 under the law?</p> <p>17 A. Right.</p> <p>18 Q. As you may know there have been some</p> <p>19 changes to the labor law in New York State in the</p> <p>20 last few years?</p> <p>21 A. Right.</p> <p>22 Q. Are you aware of the changes --</p> <p>23 A. Yeah.</p> <p>24 Q. -- to the state labor law?</p> <p>25 A. Sure.</p> <p style="text-align: right;">92</p>

<p>1 A. H. SUNG</p> <p>2 Q. When there are changes, what, if any,</p> <p>3 conversations do you have with Mr. Kim about</p> <p>4 that?</p> <p>5 A. When we change it 2015, there's major</p> <p>6 minimum wage increase \$11 to \$13. So that point,</p> <p>7 we reduced working hour every single employee at</p> <p>8 40 hours because we can't afford those overtime.</p> <p>9 So since 2015, or January 1st, no one have the</p> <p>10 overtime.</p> <p>11 Q. Okay.</p> <p>12 A. That's the only big change to our</p> <p>13 company.</p> <p>14 Q. So do you recall that particular period</p> <p>15 in 2015?</p> <p>16 A. 2015, January 1st, the minimum wage</p> <p>17 increase. That's why at that point, I told him</p> <p>18 just keep them the 40 hours a week.</p> <p>19 Q. So you made the decision --</p> <p>20 A. Yeah.</p> <p>21 Q. -- in 2015, with the change of the</p> <p>22 laws --</p> <p>23 A. Right.</p> <p>24 Q. -- to reduce --</p> <p>25 A. The working hours.</p> <p style="text-align: right;">93</p>	<p>1 A. H. SUNG</p> <p>2 Q. 2:30?</p> <p>3 A. Yeah.</p> <p>4 Q. Got it. My understanding is that the</p> <p>5 deli is only open Monday through Friday; is that</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. Has the business always had the hours of</p> <p>9 7:00 to 2:30 Monday to Friday or has that changed</p> <p>10 at all throughout the years?</p> <p>11 A. No, every day the same.</p> <p>12 Q. From the beginning it was 7:00 to 2:30,</p> <p>13 Monday to Friday?</p> <p>14 A. Right.</p> <p>15 Q. Is the cafe closed on certain holidays?</p> <p>16 A. Yes, every holiday it's closed.</p> <p>17 Q. What holiday? There's so many. So if</p> <p>18 could just list for me what holiday --</p> <p>19 A. Memorial Day.</p> <p>20 Q. Memorial Day, it was closed? Yesterday,</p> <p>21 it was closed?</p> <p>22 A. Closed. And 4th of July closed. And</p> <p>23 Christmas Day, it was closed. New Year's Eve,</p> <p>24 it's closed. And Martin Luther King Day, closed.</p> <p>25 President's Day, closed. I think Columbus Day,</p> <p style="text-align: right;">95</p>
<p>1 A. H. SUNG</p> <p>2 Q. For the employees?</p> <p>3 A. Yeah.</p> <p>4 Q. So prior to 2015, it was common for the</p> <p>5 employees at 50 Food Corp. to work over 40 hours?</p> <p>6 A. Yeah.</p> <p>7 Q. And in 2015, the change that you</p> <p>8 implemented was that employees would work only 40</p> <p>9 hours?</p> <p>10 A. 40 hours.</p> <p>11 Q. Got it. What days and hours is the cafe</p> <p>12 open?</p> <p>13 A. Six o'clock a.m., 6:00 a.m. and 4:00</p> <p>14 p.m. I think right now they closed little</p> <p>15 earlier since we decided give them only 40 hours</p> <p>16 per day.</p> <p>17 Q. I guess I'm not asking about employee</p> <p>18 hours right now. I just want to know if I wanted</p> <p>19 to go to Silo Cafe and order a sandwich, I know</p> <p>20 that the deli opens at 6:00 a.m.?</p> <p>21 A. You have to come from 7:00 a.m. until</p> <p>22 2:30.</p> <p>23 Q. Okay. So the actual business hours are</p> <p>24 7:00 a.m. to --</p> <p>25 A. 2:30.</p> <p style="text-align: right;">94</p>	<p>1 A. H. SUNG</p> <p>2 it's also closed. So whatever the office closed,</p> <p>3 store closed.</p> <p>4 Q. So you follow the office schedule. Are</p> <p>5 you speaking --</p> <p>6 A. Because 90 percent of our guest is</p> <p>7 office worker.</p> <p>8 Q. In the building of 805 Third Avenue?</p> <p>9 A. In the surrounding building.</p> <p>10 Q. Okay. Got it.</p> <p>11 A. So when they close, we close.</p> <p>12 Q. You try to follow the schedule of the</p> <p>13 businesses in the vicinity of the cafe?</p> <p>14 A. Yeah.</p> <p>15 Q. Who was in charge of setting the hours</p> <p>16 that the business would be open?</p> <p>17 A. Open hour is always same.</p> <p>18 Q. So you were the one, when the business</p> <p>19 was open, you decided, okay, we're going to have</p> <p>20 the deli open --</p> <p>21 A. Oh, you mean the holiday?</p> <p>22 Q. No. I guess my question is who was in</p> <p>23 charge, and it sounds like it's been a long</p> <p>24 practice that the business closes on certain</p> <p>25 holidays, who made that decision that it was</p> <p style="text-align: right;">96</p>

<p>1 A. H. SUNG</p> <p>2 closed on the holidays?</p> <p>3 A. I made the final decision.</p> <p>4 Q. You made the final decision?</p> <p>5 A. Yeah, Minchul always call me do I need</p> <p>6 open or closed on this day.</p> <p>7 Q. So you would be in charge of telling</p> <p>8 when to close?</p> <p>9 A. And I tell him did we close last year,</p> <p>10 and then check it and then check the office</p> <p>11 workers in the building if they open or not. If</p> <p>12 they open, we open. So we decide about three,</p> <p>13 four days prior to holiday.</p> <p>14 Q. Would it be correct to say that you have</p> <p>15 the final word --</p> <p>16 A. Yeah.</p> <p>17 Q. -- to determine when the business is</p> <p>18 open or not?</p> <p>19 A. Yeah.</p> <p>20 Q. Okay. Very good. And I think earlier</p> <p>21 this morning we discussed the quantity of</p> <p>22 employees --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- at Silo Cafe.</p> <p>25 A. Uh-huh.</p> <p style="text-align: right;">97</p>	<p>1 A. H. SUNG</p> <p>2 Q. So what you're trying to say is that all</p> <p>3 employees work the same amount of hours per week?</p> <p>4 A. That's right. That's correct.</p> <p>5 Q. But the schedule may be a little bit</p> <p>6 different?</p> <p>7 A. Yeah, just a little bit different</p> <p>8 because some guys clean the store and go home a</p> <p>9 little late than others.</p> <p>10 Q. How is it determined who comes in</p> <p>11 earlier and who comes in later?</p> <p>12 A. Manager makes that decision.</p> <p>13 Q. How does the business keep track of</p> <p>14 employees' hours? Because I assume that even</p> <p>15 though there is a set schedule, would it be</p> <p>16 correct to say that sometimes people don't appear</p> <p>17 to work on someday, maybe they're sick, maybe</p> <p>18 they're not coming in?</p> <p>19 A. Minchul always check. And we have a</p> <p>20 little paper posted on the wall and then they</p> <p>21 sign it every day when they come every day.</p> <p>22 Q. I'm sorry, are you saying that there's a</p> <p>23 sign-in sheet?</p> <p>24 A. Yeah.</p> <p>25 Q. On the wall?</p> <p style="text-align: right;">99</p>
<p>1 A. H. SUNG</p> <p>2 Q. Is it correct to say that right now</p> <p>3 there are still 10 to 12 employees?</p> <p>4 A. I don't remember exact employee.</p> <p>5 Q. Okay. Does that estimate sound correct,</p> <p>6 10 to 12?</p> <p>7 A. I don't know. I could call Minchul and</p> <p>8 how many workers there now.</p> <p>9 Q. Okay.</p> <p>10 A. But I think it's probably -- oh, here's</p> <p>11 how many here. 15 is here. Oh, no, there's two</p> <p>12 empty here. 14.</p> <p>13 MR. VARACALLI: Let the record show the</p> <p>14 Deponent was referencing Exhibit 1.</p> <p>15 A. But I don't know how many are there now.</p> <p>16 Q. Do all of the employees work the same</p> <p>17 hours?</p> <p>18 A. Some like this. Each employee, they</p> <p>19 work same hours, but some employee, the time is</p> <p>20 can be little different.</p> <p>21 Q. Okay.</p> <p>22 A. Some guy work, come from 6:00, go home</p> <p>23 3:00 or some guy come 7:00 and go home 4:00. I</p> <p>24 don't know now how Minchul handle it, but they</p> <p>25 work hour always fixed.</p> <p style="text-align: right;">98</p>	<p>1 A. H. SUNG</p> <p>2 A. Yeah.</p> <p>3 Q. Could you describe what that sign-in</p> <p>4 sheet looks like?</p> <p>5 A. I think so. I think he doing that. You</p> <p>6 mean how it looks like?</p> <p>7 Q. Yes, yes. Could you describe to me what</p> <p>8 it looks like?</p> <p>9 A. I just saw one time. Each employee name</p> <p>10 here and then I think here's the time when he</p> <p>11 have to come. When he come, when he arrive, he</p> <p>12 just write the arriving time and then he left,</p> <p>13 the leaving (sic) time, I think.</p> <p>14 Q. Is this each employee would sign</p> <p>15 themselves or would Minchul Kim sign it?</p> <p>16 A. No, I think each employee. I don't</p> <p>17 know. I got to check.</p> <p>18 Q. Is there a new sheet on the wall each</p> <p>19 week?</p> <p>20 A. Every day I think.</p> <p>21 Q. Every day, okay.</p> <p>22 A. I saw that paper maybe a few months ago.</p> <p>23 Q. Okay.</p> <p>24 A. But I believe he keep doing that, but</p> <p>25 even if he doing same hours a day for each</p> <p style="text-align: right;">100</p>

<p>1 A. H. SUNG</p> <p>2 employee. Same hours, same amount of hours, same</p> <p>3 amount of starting hours and the ending hours,</p> <p>4 always same.</p> <p>5 Q. Okay.</p> <p>6 A. But I told him you should do, you know,</p> <p>7 also keep the record for that.</p> <p>8 Q. When did you have that conversation with</p> <p>9 him about keeping the records for that?</p> <p>10 A. That I don't remember. That's long time</p> <p>11 ago.</p> <p>12 Q. So I think what you're describing, and</p> <p>13 please correct me if I'm wrong, is a document</p> <p>14 that's posted on the wall at 50 Food Corp. -- and</p> <p>15 where is it located in 50 Food Corp.? Where is</p> <p>16 it posted exactly?</p> <p>17 A. That is just behind of the wall of where</p> <p>18 the counter is.</p> <p>19 Q. Where the --</p> <p>20 A. The employee counter.</p> <p>21 Q. What's the employee counter?</p> <p>22 A. You mean the counter. Deli store has a</p> <p>23 counter, right?</p> <p>24 Q. Okay.</p> <p>25 A. And we have kind of wall.</p> <p style="text-align: right;">101</p>	<p>1 A. H. SUNG</p> <p>2 that I got to ask Minchul how he handled that. I</p> <p>3 don't know. I didn't even see that.</p> <p>4 Q. Do you recall having a recent</p> <p>5 conversation with Mr. Kim about these</p> <p>6 documents --</p> <p>7 A. No.</p> <p>8 Q. -- and asking him where they are?</p> <p>9 A. No.</p> <p>10 MR. VARACALLI: Can we go off the record</p> <p>11 for one second?</p> <p>12 MS. BARBOSA: Sure.</p> <p>13 (At this time, there was a pause in the</p> <p>14 proceeding.)</p> <p>15 MS. BARBOSA: Prior to going off the</p> <p>16 record, Mr. Sung's attorney, Mr. Varacall,</p> <p>17 handed me over some documents, a package of</p> <p>18 documents, entitled Recording Working Hours</p> <p>19 By Employer. This is the first time I've</p> <p>20 seen these documents.</p> <p>21 Q. So Mr. Sung, I'm going to just give you</p> <p>22 these documents that were just turned over to me.</p> <p>23 MS. BARBOSA: I don't have a copy. I</p> <p>24 guess -- how can we proceed to enter this as</p> <p>25 Plaintiff's exhibit? Definitely don't want</p> <p style="text-align: right;">103</p>
<p>1 A. H. SUNG</p> <p>2 Q. So behind the deli counter?</p> <p>3 A. There's some wall.</p> <p>4 Q. There's a wall, okay.</p> <p>5 A. And they keep the paper there.</p> <p>6 Q. So what you're describing is a paper</p> <p>7 that's changed on a daily basis?</p> <p>8 A. I think so. I don't know exactly. I</p> <p>9 can ask him how he do that.</p> <p>10 Q. How long have you seen this paper --</p> <p>11 A. I don't know. I don't know.</p> <p>12 Q. Would you say that it's been around for</p> <p>13 a while?</p> <p>14 A. Yeah.</p> <p>15 Q. He's used this for a while?</p> <p>16 A. Yeah.</p> <p>17 Q. Is this a document that Mr. Kim created?</p> <p>18 A. Yeah.</p> <p>19 Q. Do you know what happens to the document</p> <p>20 after, you know, after it's used? Because it</p> <p>21 sounds like it's changed often; is that right?</p> <p>22 A. Uh-huh.</p> <p>23 Q. What happens to the ones that are taken</p> <p>24 down? Do you know?</p> <p>25 A. I don't know. I don't know. Maybe --</p> <p style="text-align: right;">102</p>	<p>1 A. H. SUNG</p> <p>2 to make a copy right now. Why don't we just</p> <p>3 refer to these as Plaintiff's Exhibit 2.</p> <p>4 (Whereupon, a package of documents</p> <p>5 entitled Recording Working Hours By Employer</p> <p>6 was marked Plaintiff's Exhibit 2 for</p> <p>7 identification, as of this date.)</p> <p>8 Q. So Mr. Sung, Plaintiff's Exhibit 2 are a</p> <p>9 package of documents that were given to me by</p> <p>10 your attorney. If you could just take a look at</p> <p>11 them for me. Before we went off the record and</p> <p>12 before your attorney handed these documents over</p> <p>13 to me, I believe you were describing some type of</p> <p>14 document that you said that was posted on the</p> <p>15 wall and something that was signed by employees.</p> <p>16 A. Maybe this one is posted on the wall.</p> <p>17 Q. Okay, that's my question.</p> <p>18 A. Okay, I going to ask Minchul, make sure</p> <p>19 that, but I think this one is posted on the wall.</p> <p>20 Q. So can you describe to me, in looking at</p> <p>21 these documents, what these documents are, what</p> <p>22 they represent and how they're kept at the</p> <p>23 business?</p> <p>24 A. This one is showing that they were</p> <p>25 working hour. Like Hector was starting 6:30 to</p> <p style="text-align: right;">104</p>

<p>1 A. H. SUNG</p> <p>2 3:00, every day same. And each employee has, you</p> <p>3 know, a little different time, but every week</p> <p>4 each guys has the same hours for fixed.</p> <p>5 Q. Okay.</p> <p>6 A. And then they sign it every Friday what,</p> <p>7 you know, they check.</p> <p>8 Q. Mr. Sung, who created the template of</p> <p>9 this document? Who created this document?</p> <p>10 A. This document created by the Minchul.</p> <p>11 Q. By Minchul Kim?</p> <p>12 A. Yeah.</p> <p>13 Q. When did you become aware of Mr. Kim</p> <p>14 keeping these records? Again, this record is,</p> <p>15 it's entitled Recording Working Hours By Employer</p> <p>16 and it's a spreadsheet and it looks like the top</p> <p>17 also includes the date range --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- for the information.</p> <p>20 A. I think he used this one as a template</p> <p>21 and then he changed the date every week and then</p> <p>22 he post it on the wall that I talked about. And</p> <p>23 that one, each employee, he signed it.</p> <p>24 Q. So when did you become aware of Mr. Kim</p> <p>25 keeping these documents? When did you start</p> <p style="text-align: right;">105</p>	<p>1 A. H. SUNG</p> <p>2 Q. Okay.</p> <p>3 A. But we lost probably previous 2013,</p> <p>4 maybe we may lost when we got the water problem.</p> <p>5 Q. So although these documents, the ones</p> <p>6 that we're looking at today, go back to 2013,</p> <p>7 what you're telling me that there may have been</p> <p>8 earlier documents that may have been lost or</p> <p>9 damaged --</p> <p>10 A. That's what I think.</p> <p>11 Q. Got it.</p> <p>12 A. I'm not sure about that.</p> <p>13 Q. So let me tell you what I'm</p> <p>14 understanding and you please tell me if I'm</p> <p>15 correct. So it's my understanding that these</p> <p>16 documents, this document, is posted on a wall?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And that the employees sign?</p> <p>19 A. Sign.</p> <p>20 Q. Are you aware of what the policy is or</p> <p>21 what the practice is of when the employees sign</p> <p>22 this document?</p> <p>23 A. I think it's every Friday.</p> <p>24 Q. Every Friday?</p> <p>25 A. Yeah.</p> <p style="text-align: right;">107</p>
<p>1 A. H. SUNG</p> <p>2 noticing these documents being posted --</p> <p>3 A. -- a long time ago.</p> <p>4 Q. So not this year?</p> <p>5 A. No, a long time. Even here, we go back</p> <p>6 to 2013. I don't know. Before this, probably he</p> <p>7 has it, but we got -- we lost some document</p> <p>8 because we got some water damage at the storm</p> <p>9 about little less than one year ago. We got</p> <p>10 drain backflow so we got about this much water go</p> <p>11 to the office and then into dell. So we rip it</p> <p>12 out all the wood floor and put new floor there.</p> <p>13 Q. Okay so --</p> <p>14 A. So that time, we lost a lot of</p> <p>15 documents.</p> <p>16 Q. So it looks like, and please correct me</p> <p>17 if I'm wrong, but it looks like in just reviewing</p> <p>18 these documents a few minutes ago, that these</p> <p>19 documents go back to 2013. Is that your</p> <p>20 understanding by reviewing these that the</p> <p>21 earliest year is 2013?</p> <p>22 A. Maybe even previous year we have it.</p> <p>23 Q. Okay.</p> <p>24 A. But I don't know what day we starting</p> <p>25 for this document.</p> <p style="text-align: right;">106</p>	<p>1 A. H. SUNG</p> <p>2 Q. Have you ever seen any of the employees</p> <p>3 signing this document?</p> <p>4 A. No, I didn't see.</p> <p>5 Q. Okay.</p> <p>6 A. I didn't see, but I see during the week,</p> <p>7 I saw the paper, you know, I saw this paper</p> <p>8 posted.</p> <p>9 Q. Okay.</p> <p>10 A. I think this is a posted what I'm</p> <p>11 talking about.</p> <p>12 Q. Okay. This is the document that's</p> <p>13 posted on the wall --</p> <p>14 A. Yes.</p> <p>15 Q. -- that you were referencing earlier?</p> <p>16 A. I'm think so.</p> <p>17 Q. Do you understand that it's Minchul Kim</p> <p>18 who would actually enter the fields of the</p> <p>19 employee's name and the hours worked on Monday,</p> <p>20 Tuesday, Wednesday, Thursday and Friday? It</p> <p>21 looks like, for example, the column of Monday has</p> <p>22 an "in time" and an "out time"; is that correct?</p> <p>23 A. Yeah.</p> <p>24 Q. And there's an "in time" and an "out</p> <p>25 time" for each day of the week; is that right?</p> <p style="text-align: right;">108</p>

<p>1 A. H. SUNG</p> <p>2 A. Yeah.</p> <p>3 Q. And then the final column of the</p> <p>4 document --</p> <p>5 A. The signing.</p> <p>6 Q. -- has the employees' signatures?</p> <p>7 A. That's correct.</p> <p>8 Q. So looking at the first page of this</p> <p>9 package that we're referring to as Plaintiff's</p> <p>10 Exhibit 2, it looks like it's a weekly record</p> <p>11 from October 2nd to October 6 of 2017; is that</p> <p>12 correct?</p> <p>13 A. Uh-huh.</p> <p>14 Q. I guess one question I have, and maybe</p> <p>15 you know the answer to this and can explain it,</p> <p>16 it likes look the dates -- the times, they're not</p> <p>17 handwritten; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. It looks like it's been generated --</p> <p>20 A. That's correct.</p> <p>21 Q. -- by a computer?</p> <p>22 A. Because every day it's the same hours.</p> <p>23 Q. So this would -- so Mr. Kim would</p> <p>24 actually wouldn't change the in and the out time</p> <p>25 if there was a different time?</p> <p style="text-align: right;">109</p>	<p>1 A. H. SUNG</p> <p>2 and miss a day of work?</p> <p>3 A. No.</p> <p>4 Q. Your employees don't take time off?</p> <p>5 A. No.</p> <p>6 Q. Don't come in late and miss a day of</p> <p>7 work?</p> <p>8 A. Oh, yeah, I told you before. Because if</p> <p>9 they came late --</p> <p>10 Q. Yes.</p> <p>11 A. -- if they came late --</p> <p>12 Q. Okay.</p> <p>13 A. Maybe two hours or four hours, six</p> <p>14 hours --</p> <p>15 Q. Okay.</p> <p>16 A. -- maybe he took out some, he change it,</p> <p>17 adjust it.</p> <p>18 Q. Okay.</p> <p>19 A. But otherwise, if they late about ten</p> <p>20 minute because for subway problem, five minute,</p> <p>21 we just keep it -- kept it the same, you know.</p> <p>22 Q. So I guess my question is, you know,</p> <p>23 what is your understanding of what would be the</p> <p>24 process if somebody did call in one day or if</p> <p>25 somebody did come in significantly late, not just</p> <p style="text-align: right;">111</p>
<p>1 A. H. SUNG</p> <p>2 A. Maybe, but, you know, as I told you,</p> <p>3 they come same hours, same time, hours and time.</p> <p>4 Q. Based on, you know, your knowledge, how</p> <p>5 would a document look differently if an employee</p> <p>6 worked outside of their typical schedule?</p> <p>7 A. They never were outside of typical</p> <p>8 schedule, never.</p> <p>9 Q. They never worked outside of their</p> <p>10 typical schedule?</p> <p>11 A. No, never. We have the CCTV record</p> <p>12 there shows all the -- we have all the records</p> <p>13 there.</p> <p>14 Q. So I understand that employees have a</p> <p>15 set schedule. That's pretty standard --</p> <p>16 A. They never worked outside of their</p> <p>17 schedule.</p> <p>18 Q. So again, I understand that most</p> <p>19 businesses have a set schedule, that's typical,</p> <p>20 right, for most offices, like 9:00 to 5:00?</p> <p>21 A. That's correct.</p> <p>22 Q. I understand that. But certainly, and I</p> <p>23 hoe you would agree as well, that sometimes</p> <p>24 people, life happens and sometimes people need to</p> <p>25 come in late or sometimes people need to call in</p> <p style="text-align: right;">110</p>	<p>1 A. H. SUNG</p> <p>2 a few minutes or not even within an hour or two,</p> <p>3 but came in pretty late, what is your</p> <p>4 understanding of how that would be reflected in</p> <p>5 this document, in the Recording Working Hours by</p> <p>6 Employer?</p> <p>7 A. That is something I have to ask Minchul</p> <p>8 how he handled it. He handled it something I</p> <p>9 think. Because usually, we are very generous to</p> <p>10 the employee. Because even today, the Felix --</p> <p>11 not today, a few weeks ago, he came very late.</p> <p>12 So I ask Minchul why he come so late. And then</p> <p>13 he call me first because he has some subway</p> <p>14 problem. So I check the Google --</p> <p>15 Q. I'm sorry, who called you?</p> <p>16 A. Minchul.</p> <p>17 Q. Minchul called you.</p> <p>18 A. I asked Minchul why if Felix supposed to</p> <p>19 come here the 6:30, why he came the 7:00.</p> <p>20 Q. How did you know that he came in late?</p> <p>21 A. Because I visit that time.</p> <p>22 Q. Okay.</p> <p>23 A. I saw them suddenly. And then he said</p> <p>24 he called prior, earlier, and he have some subway</p> <p>25 problem. And then I check the Google, I going to</p> <p style="text-align: right;">112</p>

<p>1 A. H. SUNG</p> <p>2 check that he's right or not. So I check the</p> <p>3 Google and subway situation and so he's honest.</p> <p>4 Q. He's right?</p> <p>5 A. Yeah.</p> <p>6 Q. There was a subway problem?</p> <p>7 A. So we didn't take out those hours, you</p> <p>8 know.</p> <p>9 Q. Okay. Did you have -- when did you --</p> <p>10 where are these documents usually at Silo Cafe?</p> <p>11 A. In Minchul's office.</p> <p>12 Q. In Minchul's office. And describe to me</p> <p>13 where this office is.</p> <p>14 A. His office is backside of the kitchen.</p> <p>15 There is a small office.</p> <p>16 Q. Is this the only office --</p> <p>17 A. Yes.</p> <p>18 Q. -- within the premises?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Are these documents kept in a particular</p> <p>21 file cabinet?</p> <p>22 A. Yes.</p> <p>23 Q. How did you come to have this stack of</p> <p>24 documents with you this morning?</p> <p>25 A. Because when we got sued by these three</p> <p style="text-align: right;">113</p>	<p>1 A. H. SUNG</p> <p>2 for identification, as of this date.)</p> <p>3 Q. So if you could take a look at what's</p> <p>4 been marked as Plaintiff's Exhibit Number 3.</p> <p>5 When you were referencing the paper that your</p> <p>6 attorney showed to you, is this the document that</p> <p>7 you were referring to?</p> <p>8 A. I don't remember.</p> <p>9 Q. Can you read what the caption says on</p> <p>10 the first page? It says Plaintiff's --</p> <p>11 A. Oh, this one.</p> <p>12 Q. If you can read that out loud just for</p> <p>13 the record.</p> <p>14 A. But I don't remember why I brought this,</p> <p>15 but I remember my attorney wants see this paper,</p> <p>16 whatever time record, whatever.</p> <p>17 Q. So just for the record, Plaintiff's</p> <p>18 Exhibit Number 3 --</p> <p>19 A. Oh he's --</p> <p>20 Q. One moment. This is just for the</p> <p>21 record.</p> <p>22 MS. BARBOSA: So just for the record</p> <p>23 Plaintiff's Exhibit Number 3 is Plaintiff's</p> <p>24 first request for production of documents</p> <p>25 and interrogatories. This looks like it was</p> <p style="text-align: right;">115</p>
<p>1 A. H. SUNG</p> <p>2 employees and then my attorney was faxed his</p> <p>3 paper, and then I called Minchul I need this one</p> <p>4 and he brought me.</p> <p>5 Q. Okay.</p> <p>6 A. And then I didn't bring back to the</p> <p>7 Minchul's office because this is past one, you</p> <p>8 know. So that's why I have it now.</p> <p>9 Q. Do you recall when you received these</p> <p>10 documents from Minchul?</p> <p>11 A. I think it's about almost two months</p> <p>12 ago.</p> <p>13 Q. Almost two months ago?</p> <p>14 A. When he asked me the fax for this paper.</p> <p>15 Q. Is the paper that you're referring to</p> <p>16 the Plaintiff's Request For Documents?</p> <p>17 A. That's correct.</p> <p>18 Q. So when you received the Plaintiff's</p> <p>19 Request For Documents -- and we can enter that as</p> <p>20 an exhibit and you can take a look at it, just</p> <p>21 give me one moment.</p> <p>22 MS. BARBOSA: So we can enter this as</p> <p>23 Plaintiff's Exhibit Number 3.</p> <p>24 (Whereupon, the Plaintiff's Request For</p> <p>25 Documents was marked Plaintiff's Exhibit 3</p> <p style="text-align: right;">114</p>	<p>1 A. H. SUNG</p> <p>2 dated and signed by me on January 18, 2018.</p> <p>3 Q. So you were saying?</p> <p>4 A. Now I remember exactly why I have it.</p> <p>5 Because he asked me, my attorney asked me, any</p> <p>6 document. He didn't particularly which document.</p> <p>7 Any document related employee.</p> <p>8 Q. Okay.</p> <p>9 A. He want to see.</p> <p>10 Q. Okay.</p> <p>11 A. That's why I got this. And then I faxed</p> <p>12 over maybe about just last page or first page to</p> <p>13 him.</p> <p>14 Q. Okay.</p> <p>15 A. So we used this kind of forms now.</p> <p>16 THE WITNESS: Do you remember you</p> <p>17 received this?</p> <p>18 MR. VARACALLI: I don't.</p> <p>19 Q. So when you received this document, when</p> <p>20 your attorney told you I need to see records from</p> <p>21 the employee --</p> <p>22 A. Any record any document relate to this</p> <p>23 issues. That's why I got this. I ask Minchul</p> <p>24 you have anything.</p> <p>25 Q. Yes.</p> <p style="text-align: right;">116</p>

<p>1 A. H. SUNG</p> <p>2 A. You know, so he showed me this one.</p> <p>3 Q. Besides this record, this, again, this</p> <p>4 -- what's been identified as Plaintiff's Exhibit</p> <p>5 Number 2, Recording Working Hours By Employer,</p> <p>6 besides this category of documents, did you get</p> <p>7 other documents --</p> <p>8 A. No.</p> <p>9 Q. -- from Mr. Kim?</p> <p>10 A. No.</p> <p>11 Q. You didn't get any other types of</p> <p>12 document? This is the only type of document you</p> <p>13 got from Mr. Kim?</p> <p>14 A. No, I got this one. I got that form.</p> <p>15 Q. Okay.</p> <p>16 A. And I got whatever pay stub.</p> <p>17 Q. Okay, got it. So there's different</p> <p>18 categories --</p> <p>19 A. Yeah, yeah, yeah.</p> <p>20 Q. -- of documents that you received</p> <p>21 from --</p> <p>22 A. Right.</p> <p>23 Q. -- Mr. Kim?</p> <p>24 A. Yeah.</p> <p>25 Q. When you got those documents from</p> <p style="text-align: right;">117</p>	<p>1 A. H. SUNG</p> <p>2 A. Yeah.</p> <p>3 Q. So the first thing that you got from</p> <p>4 Mr. Kim was the payment reports?</p> <p>5 A. Yeah, I think this one, yes.</p> <p>6 Q. Then did you meet with Mr. Kim or speak</p> <p>7 with him again to get more documents?</p> <p>8 A. Yes.</p> <p>9 Q. How many times did you get document from</p> <p>10 him?</p> <p>11 A. Maybe two times.</p> <p>12 Q. When you received the documents, what</p> <p>13 did you do with them?</p> <p>14 A. Just look at he's doing right or not,</p> <p>15 you know.</p> <p>16 Q. I guess I'm saying when you received</p> <p>17 these documents in response to Plaintiff's</p> <p>18 Request, after getting the documents from</p> <p>19 Mr. Minchul Kim, what did you do then?</p> <p>20 A. I just bring them to my office.</p> <p>21 Q. You bring them to your office.</p> <p>22 A. And I just faxed to attorney's office.</p> <p>23 Q. So is it your testimony that when you</p> <p>24 transmitted all of these documents or when you</p> <p>25 gave them to your attorney, you included also</p> <p style="text-align: right;">119</p>
<p>1 A. H. SUNG</p> <p>2 Mr. Kim, did you get them all at one time?</p> <p>3 A. No, first thing is I got from the pay</p> <p>4 stub.</p> <p>5 Q. When you say pay stub, are you</p> <p>6 referencing something that's a payment report?</p> <p>7 A. Like a small paper, it's how many</p> <p>8 regular hours, how many overtime hours.</p> <p>9 Q. Okay, let's do this. Let's go back to</p> <p>10 Plaintiff's Exhibit Number 1, to this document</p> <p>11 here.</p> <p>12 A. Uh-huh.</p> <p>13 Q. So why don't you turn, just turn to the</p> <p>14 last page.</p> <p>15 A. Yeah, this one. This one is first</p> <p>16 document I received from the Minchul.</p> <p>17 Q. So you're referencing what's in</p> <p>18 Plaintiff's Exhibit Number 1 that's identified as</p> <p>19 D000953, it's a payment report from Felix</p> <p>20 Galindo --</p> <p>21 A. Yeah, that one.</p> <p>22 Q. -- time period May 5th through May 9th.</p> <p>23 So when you say pay stub, you're referring to</p> <p>24 this category of documents entitled payment</p> <p>25 report.</p> <p style="text-align: right;">118</p>	<p>1 A. H. SUNG</p> <p>2 this packet?</p> <p>3 A. These documents --</p> <p>4 Q. So the record is clear, I'm referring to</p> <p>5 -- when you handed all the documents in response</p> <p>6 to Plaintiff's Request For Documents, you also</p> <p>7 included this category of documents what's been</p> <p>8 identified as Plaintiff's Exhibit Number 2?</p> <p>9 A. Yeah.</p> <p>10 Q. Okay.</p> <p>11 A. But this one is I just faxed. If I'm</p> <p>12 not wrong, I remember I faxed this one to him.</p> <p>13 Q. Okay. So you think you faxed?</p> <p>14 A. Yeah, I think I faxed it. If my fax</p> <p>15 machine has a problem at that point, maybe it</p> <p>16 doesn't send to, he didn't receive it. But I</p> <p>17 remember I fax it. Not all paper, just one paper</p> <p>18 because, you know, what kind of form we use.</p> <p>19 Q. So you didn't provide all of the papers?</p> <p>20 A. No, no.</p> <p>21 Q. You just provided one?</p> <p>22 A. Yeah, one.</p> <p>23 Q. Why did you not produce all of them?</p> <p>24 A. Because this date is outside of the what</p> <p>25 the claim date, right. This one is previous one</p> <p style="text-align: right;">120</p>

<p>1 A. H. SUNG</p> <p>2 is we lose, but this is from the 2013, so I don't</p> <p>3 know why. But anyway, it's too much to fax for</p> <p>4 all documents.</p> <p>5 Q. Was there any other category of</p> <p>6 documents that you only provided a sampling of to</p> <p>7 your attorney?</p> <p>8 A. This one is from the Minchul, this</p> <p>9 payment record. This one is I faxed to him</p> <p>10 myself this document. (Indicating)</p> <p>11 Q. You're referring to the wage notice?</p> <p>12 A. Yeah. And this one is I give him by the</p> <p>13 hand. (Indicating)</p> <p>14 Q. You're referring to the payment reports?</p> <p>15 A. Yeah, this one I just gave when he I</p> <p>16 visit the store, I gave him by hand.</p> <p>17 Q. So let's talk about the payment reports.</p> <p>18 Are you confident that you gave every payment</p> <p>19 report available to Mr. Varacalli or did you just</p> <p>20 give a sampling of the documents that were</p> <p>21 available?</p> <p>22 A. Payment reports means this one?</p> <p>23 (Indicating)</p> <p>24 Q. The payment report is the last page.</p> <p>25 A. Yeah, I think I gave everything. We got</p> <p style="text-align: right;">121</p>	<p>1 A. H. SUNG</p> <p>2 A. Because he asked me to bring.</p> <p>3 Q. He asked you to bring, okay, got it.</p> <p>4 Have you ever had a conversation with Mr. Kim</p> <p>5 about, you know, how he actually -- you know,</p> <p>6 what his process is in preparing this document</p> <p>7 and in having the employees sign it? Do you</p> <p>8 understand how he does that or have you ever had</p> <p>9 a conversation with him about that?</p> <p>10 A. That I don't remember, but I saw only</p> <p>11 the paper what he doing.</p> <p>12 Q. Okay.</p> <p>13 A. But, you know.</p> <p>14 Q. Based on your knowledge, do you believe</p> <p>15 that the information contained in this document</p> <p>16 in the Recording Working Hours By Employer,</p> <p>17 Plaintiff's Exhibit Number 2, do you have any</p> <p>18 reason to believe that this information is</p> <p>19 inaccurate?</p> <p>20 A. I don't think so. Because they always</p> <p>21 work fixed hours, same time and go home same</p> <p>22 time. So you know this is very accurate.</p> <p>23 Q. So you're confident that the</p> <p>24 information --</p> <p>25 A. Yes.</p> <p style="text-align: right;">123</p>
<p>1 A. H. SUNG</p> <p>2 from those period, we have the whole thing.</p> <p>3 Q. So just correct me if I'm wrong, but my</p> <p>4 understanding is that you only provided the first</p> <p>5 page of, again, what's been identified as</p> <p>6 Plaintiff's Exhibit Number 2, which looks like an</p> <p>7 attendance record, because you thought that he</p> <p>8 only needed only one page because the rest of the</p> <p>9 documents were outside --</p> <p>10 A. Yeah.</p> <p>11 Q. -- of the period --</p> <p>12 A. That's what I thought.</p> <p>13 Q. -- referenced in the lawsuit, okay.</p> <p>14 When did you learn that you actually needed to</p> <p>15 produce all of these documents?</p> <p>16 A. This one?</p> <p>17 Q. Yes.</p> <p>18 A. When he asked me --</p> <p>19 Q. Okay.</p> <p>20 A. -- he e-mail a lot about the document.</p> <p>21 He need documents for relate for the all</p> <p>22 employees. So I found only this one and this</p> <p>23 one, this form. That's why.</p> <p>24 Q. Why did you bring this stack of</p> <p>25 documents here today?</p> <p style="text-align: right;">122</p>	<p>1 A. H. SUNG</p> <p>2 Q. -- In this category of documents --</p> <p>3 A. Right.</p> <p>4 Q. -- the attendance records --</p> <p>5 A. Yes.</p> <p>6 Q. -- includes accurate information --</p> <p>7 A. That's correct.</p> <p>8 Q. -- of the start times and end times of</p> <p>9 the employees?</p> <p>10 A. Yes.</p> <p>11 Q. Are you aware of any other system that</p> <p>12 Mr. Kim used to track employee hours?</p> <p>13 A. No.</p> <p>14 Q. What is your understanding of what the</p> <p>15 practice is at 50 Food Corp. regarding breaks</p> <p>16 during the day?</p> <p>17 A. Oh, breaks. What I believe is they have</p> <p>18 15-minute break before the lunch hour. They have</p> <p>19 some coffee and breakfast. And then -- but that,</p> <p>20 we pay for that.</p> <p>21 Q. Okay.</p> <p>22 A. But they have 30-minute lunch breaks</p> <p>23 every day.</p> <p>24 Q. Okay.</p> <p>25 A. 30 minutes. So that's what I know that.</p> <p style="text-align: right;">124</p>

<p>1 A. H. SUNG</p> <p>2 Q. When do employees typically take that</p> <p>3 30-minute lunch break?</p> <p>4 A. Each guy has a little different.</p> <p>5 Q. Okay.</p> <p>6 A. But usually, the guys, some guys took</p> <p>7 about from 2:30, some guys got a little earlier.</p> <p>8 Q. Okay.</p> <p>9 A. Depends on what his position.</p> <p>10 Q. Who determines when an employee can take</p> <p>11 their break?</p> <p>12 A. Minchul.</p> <p>13 Q. Minchul?</p> <p>14 A. Yeah.</p> <p>15 Q. Have you ever visited the cafe while</p> <p>16 employees were on break before?</p> <p>17 A. Yeah.</p> <p>18 Q. Have you ever visited when the deli was</p> <p>19 particularly busy?</p> <p>20 A. Yeah.</p> <p>21 Q. What did you observe about, you know,</p> <p>22 how employees would take their break if the deli</p> <p>23 maybe was busy and required some --</p> <p>24 A. Busy time, they cannot break.</p> <p>25 Q. Okay.</p> <p style="text-align: right;">125</p>	<p>1 A. H. SUNG</p> <p>2 have posting for minimum wage.</p> <p>3 Q. Okay.</p> <p>4 A. Posting and Workers' Compensation</p> <p>5 insurance.</p> <p>6 Q. Okay.</p> <p>7 A. That is by the law. We must posting.</p> <p>8 That is we posting I think.</p> <p>9 Q. Do you recall ever having policies</p> <p>10 around sick time or when deductions are made from</p> <p>11 somebody's salary or anything like that?</p> <p>12 A. We follow the New York State sick day</p> <p>13 pay, whatever that is. Came in about few years</p> <p>14 ago, right?</p> <p>15 Q. I'm not -- thank you for providing that</p> <p>16 information. I guess what I'm particularly</p> <p>17 interested in is not what policies you follow,</p> <p>18 but what policies may be written down and may</p> <p>19 have been distributed to employees over the</p> <p>20 years?</p> <p>21 A. No, we don't. We just follow the New</p> <p>22 York State law.</p> <p>23 Q. So your understanding is that there's</p> <p>24 never been any policies or rules --</p> <p>25 A. There's no,</p> <p style="text-align: right;">127</p>
<p>1 A. H. SUNG</p> <p>2 A. Because the busiest time is 12:30 to two</p> <p>3 o'clock is busy time.</p> <p>4 Q. Okay.</p> <p>5 A. So they can take their lunch break</p> <p>6 before 12:30 or after 2:00.</p> <p>7 Q. Okay. So typically employees will not</p> <p>8 take a break between 12:30 and 2:00?</p> <p>9 A. Probably not because that's busy hours.</p> <p>10 Q. Are there any written employment</p> <p>11 policies at 50 Food Corp.?</p> <p>12 A. No, we don't create any special policy</p> <p>13 because we have small business, don't need it.</p> <p>14 Q. So let me clarify. So when I say</p> <p>15 policies, I mean like practices of the business</p> <p>16 or any rules that you may have created or Mr. Kim</p> <p>17 created?</p> <p>18 A. No, we just using common rules, you</p> <p>19 know, common New York State labor rule.</p> <p>20 Q. Okay.</p> <p>21 A. That's all.</p> <p>22 Q. Do you recall either ever printing out</p> <p>23 any rules or policies and distributing them to</p> <p>24 employees?</p> <p>25 A. We posting some New York State law. We</p> <p style="text-align: right;">126</p>	<p>1 A. H. SUNG</p> <p>2 Q. -- that have been written down or</p> <p>3 printed out that have been distributed to</p> <p>4 employees?</p> <p>5 A. No, there's no company rules. We only</p> <p>6 follow the New York State labor law or New York</p> <p>7 City labor law, whatever.</p> <p>8 Q. Would you be surprised to hear that</p> <p>9 Mr. Kim had identified that there were policies,</p> <p>10 written policies, that were distributed to</p> <p>11 employees?</p> <p>12 A. I don't think so.</p> <p>13 Q. You don't think that he would say that?</p> <p>14 A. Okay.</p> <p>15 Q. What kind of mail does 50 Food Corp.</p> <p>16 receive at 805 Third Avenue?</p> <p>17 A. What's mean mail?</p> <p>18 Q. Mail, like from the U.S. Postal Service?</p> <p>19 A. Yeah, we receive it.</p> <p>20 Q. So 50 Food Corp. receives mail at 805</p> <p>21 Third Avenue?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Who's in charge of opening the mail that</p> <p>24 you receive?</p> <p>25 A. Actually Mr. -- first charging in by the</p> <p style="text-align: right;">128</p>

<p>1 A. H. SUNG</p> <p>2 manager, Minchul.</p> <p>3 Q. I'm sorry, say that again.</p> <p>4 A. Minchul.</p> <p>5 Q. Minchul?</p> <p>6 A. He opens the document.</p> <p>7 Q. He opens the mail, okay.</p> <p>8 A. And then if I need to look at it, he</p> <p>9 grab it and when I visit, he give it to me.</p> <p>10 Q. How would Mr. Kim determine what mail</p> <p>11 you need to look at?</p> <p>12 A. Like bank statement, you know.</p> <p>13 Q. Okay.</p> <p>14 A. And other, you know. Like we receive a</p> <p>15 lot of advertisements, mailings.</p> <p>16 Q. Like junk mail?</p> <p>17 A. Yeah, he just throw out. Only he</p> <p>18 collect for the bank statement, credit card</p> <p>19 report and my tax report kind of mail.</p> <p>20 Q. Okay.</p> <p>21 A. First, he look at it and then he gave to</p> <p>22 me.</p> <p>23 Q. So the mail that you would be in charge</p> <p>24 of would be bank statements?</p> <p>25 A. Yeah.</p> <p style="text-align: right;">129</p>	<p>1 A. H. SUNG</p> <p>2 A. Minchul.</p> <p>3 Q. How many vendors do you have at 50 Food</p> <p>4 Corp.?</p> <p>5 A. Maybe about ten.</p> <p>6 Q. Ten vendors?</p> <p>7 A. I don't know exact number, but around</p> <p>8 ten I believe.</p> <p>9 Q. Do you use more or less the same vendors</p> <p>10 at the other Silo Cafe at 32nd Street?</p> <p>11 A. I'd say about 60 percent the same or 40</p> <p>12 percent different.</p> <p>13 Q. Who's in charge of paying the vendors at</p> <p>14 the other Silo Cafe?</p> <p>15 A. Manager there.</p> <p>16 Q. The manager there. Who is the manager</p> <p>17 now? I don't know if you gave me that person's</p> <p>18 name.</p> <p>19 A. We hired a new manager about few months</p> <p>20 ago. I don't really remember the name, but he's</p> <p>21 there now.</p> <p>22 Q. So you hired a new manager just a few</p> <p>23 months ago?</p> <p>24 A. Yeah.</p> <p>25 Q. Prior to that manager, who was the</p> <p style="text-align: right;">131</p>
<p>1 A. H. SUNG</p> <p>2 Q. Credit card?</p> <p>3 A. Credit card report, monthly report.</p> <p>4 Q. I'm sorry, say that again.</p> <p>5 A. Monthly credit card statement.</p> <p>6 Q. These are credit cards that are in the</p> <p>7 name of 50 Food Corp.?</p> <p>8 A. Yeah.</p> <p>9 Q. So you would be in charge of bank</p> <p>10 statements, credit card statements?</p> <p>11 A. Yeah.</p> <p>12 Q. And anything involving tax documents?</p> <p>13 A. Tax documents, I have to hand over to my</p> <p>14 CPA because that's why he help me.</p> <p>15 Q. Got it.</p> <p>16 A. Or I just fax to him.</p> <p>17 Q. Got it, got it. What about any bills</p> <p>18 besides credit card statements --</p> <p>19 A. Bills like Con Edison bill?</p> <p>20 Q. Yes.</p> <p>21 A. Minchul handled it. He wrote the check</p> <p>22 out, he send it out, you know. And each vendor</p> <p>23 payment, we do every Wednesday we pay the</p> <p>24 vendors. He cut a check.</p> <p>25 Q. Who's in charge of paying the vendors?</p> <p style="text-align: right;">130</p>	<p>1 A. H. SUNG</p> <p>2 manager at this Silo Cafe at 32nd Street?</p> <p>3 A. Before him?</p> <p>4 Q. Yes.</p> <p>5 A. Mr. Lee, Jhong Lee.</p> <p>6 Q. Is that, J-H-O-N-G --</p> <p>7 A. J-H-O-N-G. Last name Lee, L-E-E.</p> <p>8 Q. How long had Mr. Lee been working there?</p> <p>9 A. I think he worked there about year.</p> <p>10 Q. One year?</p> <p>11 A. One year, yeah.</p> <p>12 Q. Who pays the rent at 50 Food Corp.? Is</p> <p>13 that something you're in charge of as well?</p> <p>14 A. The manager writes a check.</p> <p>15 Q. The manager cuts a check?</p> <p>16 A. Yes.</p> <p>17 Q. He delivers the rent to the landlord as</p> <p>18 well?</p> <p>19 A. Yeah.</p> <p>20 Q. So I want to go back and look at</p> <p>21 Plaintiff's Exhibit Number 1 is this document.</p> <p>22 So I'm going to ask you to turn to the last page</p> <p>23 again and the last page is the payment report for</p> <p>24 Felix Galindo. Again, this document is referenced</p> <p>25 also by Bates stamp D000953.</p> <p style="text-align: right;">132</p>

<p>1 A. H. SUNG</p> <p>2 So this is a payment report. Do you know who</p> <p>3 created this document, this template of this</p> <p>4 document?</p> <p>5 A. This template document is we got this</p> <p>6 template from other, I think other this type of</p> <p>7 store, they using this long time.</p> <p>8 Q. Okay.</p> <p>9 A. Understand? We -- but we used -- some</p> <p>10 of our vendor recommend, they have about ten this</p> <p>11 kind of store in the city, they use this form.</p> <p>12 So they recommend we use this form for it's</p> <p>13 employee and they just fax us to my office and we</p> <p>14 just copy, you know, and using this.</p> <p>15 Q. So did you start using this payment</p> <p>16 report at the beginning of Silo Cafe --</p> <p>17 A. Yes.</p> <p>18 Q. -- when it was first opened?</p> <p>19 A. Uh-huh.</p> <p>20 Q. So if I understand what you're telling</p> <p>21 me, and please correct me if I'm wrong, so a</p> <p>22 vendor who you were friendly with and who gave</p> <p>23 you some advice to use this document and he's the</p> <p>24 one who gave you the template, and when I say</p> <p>25 template, I mean a model document to use; is that</p> <p style="text-align: right;">133</p>	<p>1 A. H. SUNG</p> <p>2 Q. So there should be payment reports for</p> <p>3 every week in which Silo Cafe was opened?</p> <p>4 A. Yes.</p> <p>5 Q. Are you aware of any of these documents,</p> <p>6 these payment report documents, being lost or</p> <p>7 damaged because of the flooding at Silo Cafe?</p> <p>8 A. Uh-huh.</p> <p>9 Q. When was that flood by the way?</p> <p>10 A. That was eight months ago, maybe less</p> <p>11 than one year ago. Because I remember we got the</p> <p>12 insurance money because the damaging, so I can</p> <p>13 check what day we have the damage.</p> <p>14 Q. So what happened? What was the cause of</p> <p>15 the flood?</p> <p>16 A. No, because we are in basement, you know</p> <p>17 that right?</p> <p>18 Q. Yes.</p> <p>19 A. So there is some drain pipe in the</p> <p>20 basement, our store.</p> <p>21 Q. Yes.</p> <p>22 A. But we are the lowest level of the</p> <p>23 entire building.</p> <p>24 Q. Yeah.</p> <p>25 A. So when of the building's drain, main</p> <p style="text-align: right;">135</p>
<p>1 A. H. SUNG</p> <p>2 right?</p> <p>3 A. Yeah.</p> <p>4 Q. Do you remember who this particular</p> <p>5 individual was?</p> <p>6 A. I don't know.</p> <p>7 Q. So that vendor gave this template, this</p> <p>8 model of the document, to you directly?</p> <p>9 A. No.</p> <p>10 Q. Who did he give it to you?</p> <p>11 A. To the first manager.</p> <p>12 Q. To the first manager, okay. Do you</p> <p>13 recall ever discussing this document, this type</p> <p>14 of document, with the first manager and having a</p> <p>15 conversation about when and why to use it?</p> <p>16 A. He said -- I remember he said his friend</p> <p>17 store or other store using this one. So far</p> <p>18 there's no problem using this.</p> <p>19 Q. Okay.</p> <p>20 A. So we better use the same template. So</p> <p>21 I say okay using this. So I look at it, this has</p> <p>22 everything here, you know.</p> <p>23 Q. So did you authorize that manager to use</p> <p>24 this?</p> <p>25 A. Yes.</p> <p style="text-align: right;">134</p>	<p>1 A. H. SUNG</p> <p>2 drain, it was clogged.</p> <p>3 Q. Yes.</p> <p>4 A. So all the water from the 38th Floor</p> <p>5 down --</p> <p>6 Q. Yes.</p> <p>7 A. -- come to our store and backflow to us.</p> <p>8 Q. Okay.</p> <p>9 A. It not coming to the street, so that's</p> <p>10 why we got all water damage the entire floor.</p> <p>11 Q. In a particular area of the --</p> <p>12 A. Especially for office.</p> <p>13 Q. Especially in the office.</p> <p>14 A. Because office is low than kitchen floor</p> <p>15 level.</p> <p>16 Q. Okay.</p> <p>17 A. Because we raise up the kitchen floor</p> <p>18 for the drain work, but the office is about 18</p> <p>19 inch lower than kitchen floor level.</p> <p>20 Q. Okay.</p> <p>21 A. So all water is basically -- most water</p> <p>22 come to the kitchen, the office.</p> <p>23 Q. Okay.</p> <p>24 A. And then we have some water damage on</p> <p>25 the wood floor in dining room.</p> <p style="text-align: right;">136</p>

<p>1 A. H. SUNG</p> <p>2 Q. In the dining room?</p> <p>3 A. Dining room. Both office and dining</p> <p>4 room.</p> <p>5 Q. Did the flood cause you guys to close</p> <p>6 the business or do anything like that?</p> <p>7 A. Fortunately, that was happening in</p> <p>8 Friday.</p> <p>9 Q. Oh, okay.</p> <p>10 A. Friday -- not Friday -- Friday about</p> <p>11 that's during the -- I think during the business</p> <p>12 hours. But we keep using the pump and we using</p> <p>13 the vacuum to keep the water out. And then we</p> <p>14 call, you know, plumber to, you know, clear the</p> <p>15 clog, you know.</p> <p>16 Q. Okay.</p> <p>17 A. But it's happening almost five hours.</p> <p>18 Q. Got it. So this flood happened within</p> <p>19 the --</p> <p>20 A. I think I got the picture for that.</p> <p>21 Q. Do you recall where in the office these</p> <p>22 payment reports were maintained?</p> <p>23 A. Just our office is located behind the</p> <p>24 kitchen.</p> <p>25 Q. Okay. I guess my question is this</p> <p style="text-align: right;">137</p>	<p>1 A. H. SUNG</p> <p>2 Q. Okay.</p> <p>3 A. You know.</p> <p>4 Q. Are you saying that the most recent</p> <p>5 weeks --</p> <p>6 A. Yeah.</p> <p>7 Q. -- the payment reports were usually on</p> <p>8 his desk --</p> <p>9 A. On his desk --</p> <p>10 Q. -- and that's where you would find them?</p> <p>11 A. Yeah.</p> <p>12 Q. How often do you think you would review</p> <p>13 these payment reports?</p> <p>14 A. I don't remember. Maybe not many.</p> <p>15 Q. When you would review these payment</p> <p>16 reports, what specifically were you looking for?</p> <p>17 A. I just looked at it the signature,</p> <p>18 that's most important things. Each guy has a</p> <p>19 signature for each pay stub.</p> <p>20 Q. Why did you think -- why for you was the</p> <p>21 signature the most important?</p> <p>22 A. Because we got the lawsuit previously,</p> <p>23 same happening. Because you have to make sure</p> <p>24 all the document is correct.</p> <p>25 Q. So an employee's signature would confirm</p> <p style="text-align: right;">139</p>
<p>1 A. H. SUNG</p> <p>2 office, if you could describe it to me, are there</p> <p>3 file cabinets?</p> <p>4 A. Yeah.</p> <p>5 Q. How many file cabinets?</p> <p>6 A. We got two file cabinets.</p> <p>7 Q. Do you recall where exactly the payment</p> <p>8 reports were filed?</p> <p>9 A. That I don't know. I don't know.</p> <p>10 Minchul handled it.</p> <p>11 Q. When you would visit 50 Food Corp., when</p> <p>12 you would visit the Silo Cafe, would you spend</p> <p>13 time in this office?</p> <p>14 A. Yeah, times I, you know, I sitting there</p> <p>15 and using the computer and look at the -- this</p> <p>16 kind of, you know, record.</p> <p>17 Q. Was it part of your practice to review</p> <p>18 these payment reports --</p> <p>19 A. Uh-huh, yeah, sometimes I look at it.</p> <p>20 Q. -- during your visits?</p> <p>21 A. Uh-huh.</p> <p>22 Q. So where would you find these payment</p> <p>23 reports to review them?</p> <p>24 A. Usually, last week, this paper is</p> <p>25 sitting, still sitting Minchul's desk usually.</p> <p style="text-align: right;">138</p>	<p>1 A. H. SUNG</p> <p>2 that the information --</p> <p>3 A. That's right.</p> <p>4 Q. -- in the payment report --</p> <p>5 A. That this happened.</p> <p>6 Q. -- is correct?</p> <p>7 A. Yeah.</p> <p>8 Q. When Mr. Kim started as a manager of the</p> <p>9 business, do you recall showing him this model --</p> <p>10 A. Yeah.</p> <p>11 Q. -- of this document?</p> <p>12 A. Yes.</p> <p>13 Q. At that time, did you instruct him to</p> <p>14 use this payment report to keep track of the --</p> <p>15 A. I --</p> <p>16 Q. Let me just finish.</p> <p>17 A. Yeah.</p> <p>18 Q. Did you instruct him to keep this</p> <p>19 payment report --</p> <p>20 A. Yes.</p> <p>21 Q. -- to use it --</p> <p>22 A. Yes.</p> <p>23 Q. -- to fill it out on a weekly basis?</p> <p>24 A. Yes.</p> <p>25 Q. Why was it important for you that</p> <p style="text-align: right;">140</p>

<p>1 A. H. SUNG</p> <p>2 Mr. Kim do that?</p> <p>3 A. Because this is most important thing for</p> <p>4 in case we got sued from the employee about</p> <p>5 this --</p> <p>6 Q. Okay.</p> <p>7 A. -- we must have the right signature for</p> <p>8 each pay stub.</p> <p>9 Q. Okay.</p> <p>10 A. Because also we pay the cash.</p> <p>11 Q. Did you give him instructions -- did you</p> <p>12 give Mr. Kim instructions about how to fill out</p> <p>13 this payment report?</p> <p>14 A. Yes, I did.</p> <p>15 Q. Could you recall what you told him</p> <p>16 exactly or what was the most important thing?</p> <p>17 Did anything stand out to you as to what you</p> <p>18 spoke about?</p> <p>19 A. Yeah, I just explained like the paper</p> <p>20 says, the regular hours, what's the rate, what's</p> <p>21 the earning for regular overtime, and, you know,</p> <p>22 deduction for the lunch hour. And then make sure</p> <p>23 the sign, the signature, got it and we have to</p> <p>24 must keep record.</p> <p>25 Q. I believe you indicated earlier that</p> <p style="text-align: right;">141</p>	<p>1 A. H. SUNG</p> <p>2 MS. BARBOSA: So just for the record,</p> <p>3 Mr. Sung is referencing LS54 which is a</p> <p>4 notice and acknowledgement of pay rate and</p> <p>5 pay day.</p> <p>6 Q. Would you agree that this is the</p> <p>7 document --</p> <p>8 A. Yes.</p> <p>9 Q. -- created by the New York State</p> <p>10 Department of Labor?</p> <p>11 A. Yeah.</p> <p>12 Q. So you're saying that the pay rates were</p> <p>13 documented in this notice?</p> <p>14 A. Right.</p> <p>15 Q. Can we call this the wage notice so that</p> <p>16 we're consistent?</p> <p>17 A. I don't know. Yes, I think so.</p> <p>18 Q. So when did you learn about this wage</p> <p>19 notice?</p> <p>20 A. Learn about?</p> <p>21 Q. Or when did you realize that there was a</p> <p>22 wage notice that was created by the New York</p> <p>23 State Department of Labor?</p> <p>24 A. At the beginning.</p> <p>25 Q. At the beginning of what?</p> <p style="text-align: right;">143</p>
<p>1 A. H. SUNG</p> <p>2 when Mr. Kim started as the manager at 50 Food</p> <p>3 Corp., most of the employees, they were employees</p> <p>4 already at the business?</p> <p>5 A. Yeah.</p> <p>6 Q. Right. And those were employees that</p> <p>7 were hired by the previous manager?</p> <p>8 A. That's right. Except Esteban.</p> <p>9 Q. Esteban, okay. Any new employees were</p> <p>10 hired by Minchul Kim?</p> <p>11 A. Minchul, yes.</p> <p>12 Q. Got it. So was there any document that</p> <p>13 referenced what the pay rates were for the</p> <p>14 employees that had already been there?</p> <p>15 A. Yeah, we got LS54 form.</p> <p>16 Q. What document are you referring to?</p> <p>17 A. That form. It shows how much per hour</p> <p>18 rate was, the overtime rate. (Indicating)</p> <p>19 Q. Are you talking about a wage notice?</p> <p>20 A. Yeah.</p> <p>21 Q. Are you talking about, let's see, are</p> <p>22 you talking about the second page --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- of Plaintiff's Exhibit Number 1?</p> <p>25 A. Yeah.</p> <p style="text-align: right;">142</p>	<p>1 A. H. SUNG</p> <p>2 A. For the business when I opened it.</p> <p>3 Q. At the beginning of the business, okay.</p> <p>4 And who told you about your obligation to keep</p> <p>5 this pay notice?</p> <p>6 A. I think it's my accountant.</p> <p>7 Q. Your accountant?</p> <p>8 A. Yeah.</p> <p>9 Q. Do you recall what he told you exactly</p> <p>10 about your obligation to keep --</p> <p>11 A. Yeah, he -- I ask my accountant for the</p> <p>12 payroll so what kind of paper do we need to keep</p> <p>13 it. And he suggest what we need to do. And that</p> <p>14 is one of paper, we have to keep. He said it's</p> <p>15 very important.</p> <p>16 Q. So what you're telling me is that when</p> <p>17 you opened the business, when you opened Silo</p> <p>18 Cafe, you had a conversation with the accountant</p> <p>19 about the documents that you would need for</p> <p>20 payroll, and he informed you that you should fill</p> <p>21 out a pay notice, a wage notice?</p> <p>22 A. That's LS54, yeah, this paper. But this</p> <p>23 form is also changed it several times. Sometimes</p> <p>24 form is different, but anyway, you know, we keep</p> <p>25 this one.</p> <p style="text-align: right;">144</p>

<p>1 A. H. SUNG</p> <p>2 Q. So when would you create a wage notice</p> <p>3 for each employee?</p> <p>4 A. Uh-huh.</p> <p>5 Q. When would you create it? At what</p> <p>6 point?</p> <p>7 A. When they hired.</p> <p>8 Q. When they're hired?</p> <p>9 A. Yeah.</p> <p>10 Q. Did you follow your accountant's advice</p> <p>11 for each employee when they were hired?</p> <p>12 A. No.</p> <p>13 Q. No?</p> <p>14 A. No.</p> <p>15 Q. When did you start filling out these</p> <p>16 wage notices --</p> <p>17 A. I don't remember.</p> <p>18 Q. -- for employees?</p> <p>19 A. That --</p> <p>20 Q. You don't remember?</p> <p>21 A. Yeah.</p> <p>22 Q. But is it correct, just correct me if</p> <p>23 I'm mistaken, but were you explaining to me</p> <p>24 earlier your accountant told you when you opened</p> <p>25 the business that you should be filling out these</p> <p style="text-align: right;">145</p>	<p>1 A. H. SUNG</p> <p>2 Q. So would you instruct to Mr. Kim that --</p> <p>3 A. Yeah.</p> <p>4 Q. Any time an employee was hired, that he</p> <p>5 should fill out a wage notice for each employee?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall when you instructed Mr. Kim</p> <p>8 to do that?</p> <p>9 A. I don't remember. That's long time ago.</p> <p>10 Q. Would it be correct to say that you</p> <p>11 instructed him to do this at the beginning of</p> <p>12 Mr. Kim's employment as the manager?</p> <p>13 A. Probably about that time.</p> <p>14 Q. Probably about that time?</p> <p>15 A. Yeah.</p> <p>16 Q. Based on, you know, your knowledge, do</p> <p>17 you think that Mr. Kim did this?</p> <p>18 A. Yeah.</p> <p>19 Q. That he filled out the wage notices?</p> <p>20 A. Yeah.</p> <p>21 Q. For every employee that was hired?</p> <p>22 A. Yeah.</p> <p>23 Q. And also when there were raises?</p> <p>24 A. Yeah.</p> <p>25 Q. Are you aware of what wage notices were</p> <p style="text-align: right;">147</p>
<p>1 A. H. SUNG</p> <p>2 wage notices for your employees?</p> <p>3 A. Yeah. I think I got the information from</p> <p>4 him that we need this kind of paper have to keep</p> <p>5 record.</p> <p>6 Q. But you decided at that point not to</p> <p>7 fill it out with each employee?</p> <p>8 A. No, we fill it out each employee. This</p> <p>9 one filled by each employee, every single</p> <p>10 employee has this one and we got renewed employee</p> <p>11 when we raised their --</p> <p>12 Q. Say that again.</p> <p>13 A. We renew this form when we raised their</p> <p>14 wages, hourly rate.</p> <p>15 Q. So is it your testimony that you have a</p> <p>16 wage notice for each employee for when they're</p> <p>17 hired and when they're given a raise?</p> <p>18 A. Raise, yeah. So that's when we got</p> <p>19 because here shows like a \$10.13 cents per hour.</p> <p>20 Q. Sure.</p> <p>21 A. So when we raise it 10.15, we have to</p> <p>22 put the new one.</p> <p>23 MS. BARBOSA: Just for the record,</p> <p>24 Mr. Sung was referring to the wage notice</p> <p>25 that was in Plaintiff's Exhibit Number 1.</p> <p style="text-align: right;">146</p>	<p>1 A. H. SUNG</p> <p>2 produced by you and 50 Food Corp. in response to</p> <p>3 Plaintiff's Request For Documents?</p> <p>4 A. Yeah, he asked me all the paper,</p> <p>5 whatever paper.</p> <p>6 Q. Okay.</p> <p>7 A. For relate for the payroll.</p> <p>8 Q. You produced all of the wage notices</p> <p>9 that related to the Plaintiffs?</p> <p>10 A. If we have it.</p> <p>11 Q. If you have it. Why wouldn't you have</p> <p>12 all of them?</p> <p>13 A. Huh?</p> <p>14 Q. Is there any reason why you wouldn't</p> <p>15 have all of the wage notices?</p> <p>16 A. We got some lost from the water damage.</p> <p>17 Q. Was there a particular section --</p> <p>18 A. I don't know.</p> <p>19 Q. I didn't finish my question. Was there</p> <p>20 a particular section in the office that was</p> <p>21 particularly damaged by the flood?</p> <p>22 A. No. Water entire -- because that office</p> <p>23 is about half size of this.</p> <p>24 Q. Okay.</p> <p>25 A. You know, so once water come about this</p> <p style="text-align: right;">148</p>

<p>1 A. H. SUNG</p> <p>2 much, I don't know where he keep this one, but,</p> <p>3 you know, small office is very lousy and he said</p> <p>4 he lost lot of paper in that point.</p> <p>5 Q. So Mr. Sung, just to be clear, is it</p> <p>6 your testimony that a wage notice was filled out</p> <p>7 upon hire for each of the Plaintiffs in the</p> <p>8 lawsuit?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And also was filled out any time they</p> <p>11 received a raise?</p> <p>12 A. As long as I know.</p> <p>13 Q. As far as you know?</p> <p>14 A. Because I instructed Mr. Kim doing that</p> <p>15 way.</p> <p>16 Q. Is it your understanding that some of</p> <p>17 these wage notices were damaged and that's why</p> <p>18 not all of them were produced in response to</p> <p>19 Plaintiff's Request For Documents?</p> <p>20 A. Because whatever -- even I tried once,</p> <p>21 we got sued, I tried, but I found some documents</p> <p>22 we don't have it. So I ask Mr. Kim where is the</p> <p>23 papers and said he may have some damage. He said</p> <p>24 when we have the water damage, water problem, and</p> <p>25 he just throw out some paper. That's why I</p> <p style="text-align: right;">149</p>	<p>1 A. H. SUNG</p> <p>2 approval how much we pay by hour.</p> <p>3 Q. So when he wants to hire somebody, does</p> <p>4 he call you and say --</p> <p>5 A. Yeah, yeah.</p> <p>6 Q. -- how much should I pay this person?</p> <p>7 A. No, he say like that, he want to pay</p> <p>8 something amount, it is okay? So I said okay or</p> <p>9 I say no.</p> <p>10 Q. I'm sorry, you may want to repeat that</p> <p>11 just for the record. Can you repeat your answer?</p> <p>12 A. Yeah, he asks me usually after he</p> <p>13 interview someone, you know, and then he told me</p> <p>14 how much, certain amount he wants pay.</p> <p>15 Q. Okay.</p> <p>16 A. It is okay to me. So I say sometimes</p> <p>17 yes or sometimes no.</p> <p>18 Q. So you determine the pay rate?</p> <p>19 A. Yeah.</p> <p>20 Q. You authorize the pay rate?</p> <p>21 A. That's correct.</p> <p>22 Q. Got it. Do employees typically receive</p> <p>23 raises?</p> <p>24 A. Yeah.</p> <p>25 Q. How often do you think employees receive</p> <p style="text-align: right;">151</p>
<p>1 A. H. SUNG</p> <p>2 thought maybe that time so we lost a lot of</p> <p>3 papers.</p> <p>4 Q. Is it Mr. Kim's responsibility to also</p> <p>5 distribute employees' pay on a weekly basis?</p> <p>6 A. Yeah.</p> <p>7 Q. I think you told me earlier that pay is</p> <p>8 distributed on either a Wednesday or a Friday; is</p> <p>9 that right?</p> <p>10 A. Yeah.</p> <p>11 Q. What is your understanding of how</p> <p>12 employees are paid? If they're paid by hourly</p> <p>13 rates, weekly salaries?</p> <p>14 A. Hourly rates.</p> <p>15 Q. Hourly rates, okay. And who determines</p> <p>16 the hourly rates of employees?</p> <p>17 A. I determine.</p> <p>18 Q. You determine them?</p> <p>19 A. Yeah.</p> <p>20 Q. So how does that work when an employee</p> <p>21 is hired? Because I think you told me earlier</p> <p>22 that any new employees that weren't hired by the</p> <p>23 old manager are hired by Minchul Kim; is that</p> <p>24 right?</p> <p>25 A. Yeah, but he hired, but he need my</p> <p style="text-align: right;">150</p>	<p>1 A. H. SUNG</p> <p>2 raises?</p> <p>3 A. It depends on employee, but at least</p> <p>4 they raise about one to two times a year about 25</p> <p>5 cents per hour, per maybe six months.</p> <p>6 Q. Is that a policy that you have or a</p> <p>7 practice?</p> <p>8 A. No, it's not policy, but it depends on</p> <p>9 each employee how they work.</p> <p>10 Q. So it's discretionary?</p> <p>11 A. Yeah.</p> <p>12 Q. Who decides if somebody gets a raise?</p> <p>13 A. Minchul decided and he asked me my</p> <p>14 approval.</p> <p>15 Q. So you need to authorize it?</p> <p>16 A. That's correct.</p> <p>17 MS. BARBOSA: Got it. So if we could</p> <p>18 just take a few minutes for a break. It's</p> <p>19 one o'clock right now.</p> <p>20 THE WITNESS: Can I say just one thing?</p> <p>21 MS. BARBOSA: Do you want to go off the</p> <p>22 record?</p> <p>23 (Whereupon, a discussion was held off</p> <p>24 the record.)</p> <p>25 MS. BARBOSA: So why don't we stay on</p> <p style="text-align: right;">152</p>

<p>1 A. H. SUNG</p> <p>2 the record and if I need a few minutes, I'll</p> <p>3 tell everybody.</p> <p>4 Q. So we've spoken about the other Silo</p> <p>5 Cafe, right, the one that's located on 32nd</p> <p>6 Street, and if I'm remembering correctly, I think</p> <p>7 you told me that the Silo Cafe at 32nd Street was</p> <p>8 open before --</p> <p>9 A. 2006.</p> <p>10 Q. Was open before?</p> <p>11 A. Yeah, two years before.</p> <p>12 Q. And could I ask you what caused you to</p> <p>13 open up a dell? Had you had experience running</p> <p>14 dell's or working in dell's in the past?</p> <p>15 A. What caused?</p> <p>16 Q. Yes. I'm just interested to know why</p> <p>17 you opened --</p> <p>18 A. Oh, why.</p> <p>19 Q. Yes.</p> <p>20 A. The reason is after I finished closed</p> <p>21 the landscape business, I do a little</p> <p>22 construction business.</p> <p>23 Q. Okay.</p> <p>24 A. At the city.</p> <p>25 Q. Okay.</p> <p style="text-align: right;">153</p>	<p>1 A. H. SUNG</p> <p>2 involved in the business, that you had managers?</p> <p>3 A. My wife also cannot handle -- the woman</p> <p>4 cannot handle that side of business. That's what</p> <p>5 I thought. And then she didn't have any</p> <p>6 experience, so we need experience manager for</p> <p>7 operating the business.</p> <p>8 Q. Would it be correct to say that you</p> <p>9 provided guidance to the managers similar to the</p> <p>10 guidance that you provided Minchul Kim about how</p> <p>11 to track hours and to track --</p> <p>12 A. Oh, yeah.</p> <p>13 Q. -- pay?</p> <p>14 A. Sure.</p> <p>15 Q. Were any payroll and time records</p> <p>16 similar records that you used at 50 Food Corp.</p> <p>17 that you used at 32nd Street?</p> <p>18 A. Yeah.</p> <p>19 Q. Why were those documents similar?</p> <p>20 A. Because it was two same stores, you</p> <p>21 know. It is easier to handle it.</p> <p>22 Q. So are you the one who implemented the</p> <p>23 practice of using the payment reports --</p> <p>24 A. Yeah. It's all the same because we used</p> <p>25 the same accountant.</p> <p style="text-align: right;">155</p>
<p>1 A. H. SUNG</p> <p>2 A. And then I constructed some dell store</p> <p>3 for others.</p> <p>4 Q. Okay.</p> <p>5 A. And then I knew dell business -- I learn</p> <p>6 dell business when I construct for someone else.</p> <p>7 And then those space for Silo Cafe, I found a</p> <p>8 very good rent, very cheap rent for the location.</p> <p>9 Q. Okay.</p> <p>10 A. And I thought, oh, why couldn't we --</p> <p>11 why couldn't I do my own business. Actually,</p> <p>12 thinking is, I make those dell for my wife</p> <p>13 because my wife never work until my son went to</p> <p>14 college.</p> <p>15 Q. And that was in two thousand --</p> <p>16 A. 2006.</p> <p>17 Q. '67</p> <p>18 A. Yeah. And then I thought she needed</p> <p>19 some kind of work so I made those dell for my</p> <p>20 wife. That is a starting, you know.</p> <p>21 Q. Okay.</p> <p>22 A. So that's the reason I started.</p> <p>23 Q. I understand, you know, from our</p> <p>24 conversation earlier about the Silo Cafe at 32nd</p> <p>25 Street, that while your wife, you know, was very</p> <p style="text-align: right;">154</p>	<p>1 A. H. SUNG</p> <p>2 Q. Let me just finish my question so we can</p> <p>3 get a clear record. So was it your decision to</p> <p>4 implement what we've been labeling as the payment</p> <p>5 record? Again, just so we're all clear, when I</p> <p>6 say payment report, I'm referring to the last</p> <p>7 page in Plaintiff's Exhibit 1.</p> <p>8 A. We used the same form.</p> <p>9 Q. Was it your decision to use the same</p> <p>10 form --</p> <p>11 A. Yes.</p> <p>12 Q. -- at the 32nd Street location --</p> <p>13 A. Yes.</p> <p>14 Q. -- and the Third Avenue location?</p> <p>15 A. That's correct.</p> <p>16 Q. At the 32nd Street location, whose</p> <p>17 responsibility was it to fill out those payment</p> <p>18 report --</p> <p>19 A. The manager.</p> <p>20 Q. Was that payment report used at the</p> <p>21 beginning of the Silo Cafe at the East 32nd</p> <p>22 Street?</p> <p>23 A. Yes.</p> <p>24 Q. Was it your practice and maybe your</p> <p>25 wife's practice to review those payment reports,</p> <p style="text-align: right;">156</p>

<p>1 A. H. SUNG</p> <p>2 and --</p> <p>3 A. Yeah, yeah.</p> <p>4 Q. -- to make sure that the information was</p> <p>5 accurate?</p> <p>6 A. That's correct.</p> <p>7 Q. So, I'm aware that there was a New York</p> <p>8 State Department of Labor investigation at the</p> <p>9 32nd Street location.</p> <p>10 A. Yeah, two times.</p> <p>11 Q. Two times. What years do you recall</p> <p>12 there being an investigation?</p> <p>13 A. I think first time it was 2007, someday.</p> <p>14 I don't exactly remember.</p> <p>15 Q. Okay.</p> <p>16 A. But 2007 or 2008.</p> <p>17 Q. 2007 or 2008?</p> <p>18 A. Yes.</p> <p>19 Q. What about the second investigation?</p> <p>20 A. Second one is very recent. I think it's</p> <p>21 about 2014, '15 or '14, something like that.</p> <p>22 Q. Is the investigation that initiated in</p> <p>23 either 2014 or 2015, still ongoing?</p> <p>24 A. No, it's done.</p> <p>25 Q. It's been resolved?</p> <p>157</p>	<p>1 A. H. SUNG</p> <p>2 Q. Did you attend that hearing along with</p> <p>3 your wife --</p> <p>4 A. No.</p> <p>5 Q. -- or any other individuals?</p> <p>6 A. Just me.</p> <p>7 Q. Why did you attend?</p> <p>8 A. They asked me to attend.</p> <p>9 Q. Who asked you to attend?</p> <p>10 A. Labor Department.</p> <p>11 Q. Did they ask you to attend --</p> <p>12 A. For the hearing.</p> <p>13 Q. Did they ask you to attend the hearing</p> <p>14 in your role as an employer?</p> <p>15 A. Yeah.</p> <p>16 Q. Was your wife --</p> <p>17 A. No.</p> <p>18 Q. -- not invited to --</p> <p>19 A. Not invited.</p> <p>20 Q. -- or requested to attend?</p> <p>21 A. Just me because I am the owner of the</p> <p>22 company and she didn't speak English well.</p> <p>23 Q. I guess I'm confused because I thought</p> <p>24 you told me earlier that your wife was the owner?</p> <p>25 A. No, Silo 32nd, I'm the owner.</p> <p>159</p>
<p>1 A. H. SUNG</p> <p>2 A. They dismiss it.</p> <p>3 Q. It's been dismissed?</p> <p>4 A. They're same case.</p> <p>5 Q. When you say same case, what do you</p> <p>6 mean?</p> <p>7 A. This means they said they didn't list</p> <p>8 overtime.</p> <p>9 Q. Okay. So same allegations?</p> <p>10 A. Same allegations.</p> <p>11 Q. Got it. So let's talk about the</p> <p>12 investigation from 2007 or 2008. When do you</p> <p>13 recall learning about the investigation?</p> <p>14 A. They send us a letter, but before that,</p> <p>15 the inspector came to the store and had</p> <p>16 interviews each employee. And at that time, we</p> <p>17 show them all the paperwork and it was okay, but</p> <p>18 we received a letter and about three, four guys,</p> <p>19 you know, keep saying they don't receive the</p> <p>20 overtime. And I went to the hearing myself</p> <p>21 without the lawyer in the New York State Labor</p> <p>22 Department.</p> <p>23 Q. Did you attend that, you said, a</p> <p>24 hearing?</p> <p>25 A. Hearing, myself.</p> <p>158</p>	<p>1 A. H. SUNG</p> <p>2 Q. So you're --</p> <p>3 A. But doesn't matter. It's wife and</p> <p>4 husband.</p> <p>5 Q. So just so that I'm clear, both you and</p> <p>6 your wife own the 32nd Street?</p> <p>7 A. But in the name of the corporation, it's</p> <p>8 my name is on there.</p> <p>9 Q. Got it. So sometime in 2007 and 2008,</p> <p>10 you attended a hearing --</p> <p>11 A. Yeah.</p> <p>12 Q. -- in your role as an employer at the</p> <p>13 32nd Street Silo Cafe?</p> <p>14 A. Right.</p> <p>15 Q. Your wife did not attend?</p> <p>16 A. No.</p> <p>17 Q. You explained to me that you submitted</p> <p>18 documents to them?</p> <p>19 A. Yes.</p> <p>20 Q. I think you mentioned earlier also that</p> <p>21 the 32nd Street location had kept the payment</p> <p>22 reports?</p> <p>23 A. Yeah.</p> <p>24 Q. So you submitted to them all those</p> <p>25 payment reports?</p> <p>160</p>

<p>1 A. H. SUNG</p> <p>2 A. I submitted exact same form, this one.</p> <p>3 (Indicating)</p> <p>4 Q. Okay. And you're referencing the</p> <p>5 payment report; is that right?</p> <p>6 A. Yeah, this one. (Indicating)</p> <p>7 Q. What was the result of what you</p> <p>8 described as a hearing?</p> <p>9 A. 2007 case, they ask me -- they pushing</p> <p>10 me for the settle, but even that times, I don't</p> <p>11 want to settle, but they keep saying. Because</p> <p>12 that time, it's just one year after we start this</p> <p>13 business so we don't know that much about the</p> <p>14 labor law for the deli. So I keep tell him I</p> <p>15 just want to go to trial because I paid overtime.</p> <p>16 I don't want to pay other because if I agree, I</p> <p>17 settled, I become the bad person through not</p> <p>18 paying the overtime. That I cannot accept it.</p> <p>19 Q. Okay.</p> <p>20 A. So even if I pay more than what they</p> <p>21 asking, I want to go to trial.</p> <p>22 Q. Okay.</p> <p>23 A. But I met one lady who is Korean lady --</p> <p>24 Q. Can you stop for a second. You said one</p> <p>25 lady?</p> <p style="text-align: right;">161</p>	<p>1 A. H. SUNG</p> <p>2 that at that time. So we settle about half price</p> <p>3 and I paying spread about two years in payment.</p> <p>4 And back to 2014 and '15s, exact same</p> <p>5 case. And at that time also the Labor Department</p> <p>6 inspector came to store, had interview each</p> <p>7 employee and three guys, they say they didn't pay</p> <p>8 the overtime. So in that point, I was so busy, I</p> <p>9 hired one lawyer for protect me.</p> <p>10 Q. In 2014, 2015?</p> <p>11 A. Yes.</p> <p>12 Q. Is it Mr. Varacalli or another attorney?</p> <p>13 A. Another attorney.</p> <p>14 Q. Can you tell me that attorney's name?</p> <p>15 A. She is a Korean lady.</p> <p>16 Q. Is her name Diane Lee?</p> <p>17 A. Diane Lee.</p> <p>18 Q. I know her.</p> <p>19 A. But she didn't do nothing.</p> <p>20 Q. Okay.</p> <p>21 A. Actually, she did do -- you know, she</p> <p>22 only representative the Labor Department, not</p> <p>23 protect me. So I fire her.</p> <p>24 Q. Okay.</p> <p>25 A. I didn't use her and then I appeared to</p> <p style="text-align: right;">163</p>
<p>1 A. H. SUNG</p> <p>2 A. One woman.</p> <p>3 Q. Okay.</p> <p>4 A. Who worked for the Labor Department.</p> <p>5 She suggest me to settle.</p> <p>6 Q. Who is this person?</p> <p>7 A. I don't remember her name. I think she</p> <p>8 is still working in the department I believe.</p> <p>9 Q. Are you describing a female --</p> <p>10 A. Female.</p> <p>11 Q. -- investigator from the Department of</p> <p>12 Labor?</p> <p>13 A. That's correct.</p> <p>14 Q. Was she a Korean speaking individual?</p> <p>15 A. Yes. And then she suggest just settle.</p> <p>16 Because in that point -- because the reason I</p> <p>17 settle because I hired illegal employee, but that</p> <p>18 is bother of me.</p> <p>19 Q. That's what?</p> <p>20 A. That bothered me.</p> <p>21 Q. That bothered you?</p> <p>22 A. Yeah, because it's not right. Because</p> <p>23 their status is not legal, you know, but I hire</p> <p>24 him. So I worry about that case. I hired</p> <p>25 illegal employee, no? That's why I settled at</p> <p style="text-align: right;">162</p>	<p>1 A. H. SUNG</p> <p>2 myself without lawyer. And then my three</p> <p>3 employee came and then we got a hearing in front</p> <p>4 of judges and I explained them. He asked me did</p> <p>5 you pay fixed pay every week, I said, yes.</p> <p>6 But reason I pay fixed rate because our</p> <p>7 opening business hours is always same. So just</p> <p>8 for one more extra hour, I cannot hire another</p> <p>9 person so I paid overtime. And then I -- each</p> <p>10 week, that's why they paid each week in same</p> <p>11 amount of wages. So in that time, the judges</p> <p>12 said fixed rate doesn't mean it's not to pay</p> <p>13 overtime.</p> <p>14 Q. Okay.</p> <p>15 A. That's why the case is dismissed.</p> <p>16 Q. So let me just make sure I understand.</p> <p>17 So in 2007, 2008, you actually ended settling</p> <p>18 with the New York State Department of Labor?</p> <p>19 A. Yeah.</p> <p>20 Q. Do you recall how much you paid?</p> <p>21 A. I think about \$25,000.</p> <p>22 Q. \$25,000?</p> <p>23 A. Yeah, so I spread out about 24 months</p> <p>24 paying. It wasn't necessary.</p> <p>25 Q. Did you have an attorney represent you</p> <p style="text-align: right;">164</p>

<p style="text-align: center;">A. H. SUNG</p> <p>in 2007, 2008?</p> <p>A. No.</p> <p>Q. You represented yourself?</p> <p>A. Yes.</p> <p>6 Q. And then in 2014, 2015, I understand for</p> <p>7 that investigation, you initially did have an</p> <p>8 attorney, Ms. Lee, who was advising you. She was</p> <p>9 fired and then you represented yourself?</p> <p>10 A. Yes.</p> <p>11 Q. But the case was resolved and the judge</p> <p>12 found that you didn't have to pay anything?</p> <p>13 A. No.</p> <p>14 Q. So you never paid anything as a result</p> <p>15 of that investigation?</p> <p>16 A. No.</p> <p>17 Q. I believe you described a couple of</p> <p>18 minutes ago that you had a conversation or you</p> <p>19 had some conversations with a Korean-speaking</p> <p>20 investigator at the New York State Department of</p> <p>21 Labor?</p> <p>22 A. Correct.</p> <p>23 Q. If I understand correctly, it was based</p> <p>24 on her advice to you that you actually settled</p> <p>25 the case?</p> <p style="text-align: right;">165</p>	<p style="text-align: center;">A. H. SUNG</p> <p>1 But I don't afraid about that. But I</p> <p>2 afraid for I hired the illegal immigrant. That</p> <p>3 is what I was afraid of. But now reason I go all</p> <p>4 the way to trial because now that doesn't matter.</p> <p>5 That case, I used -- still this guys illegal, you</p> <p>6 know, immigrant, I using him, but that doesn't</p> <p>7 matter to the Labor Department.</p> <p>8 Q. Okay.</p> <p>9 A. The fact is I paid overtime. They keep</p> <p>10 lying. But I may have a little lack of</p> <p>11 paperwork.</p> <p>12 Q. You may have what?</p> <p>13 A. The lack of paper. We lost some paper.</p> <p>14 That's the problem now.</p> <p>15 Q. So again, my understanding is that, you</p> <p>16 know, you kept the same records?</p> <p>17 A. Yeah.</p> <p>18 Q. At the Silo Cafe located at 32nd Street</p> <p>19 as you kept at the Silo Cafe on Third Avenue?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Yet the Department of Labor in 2007 and</p> <p>22 2008 found the need to investigate Silo Cafe and</p> <p>23 the Investigator recommended that you settle the</p> <p>24 case and it was settled for 25,000?</p> <p>25</p> <p style="text-align: right;">167</p>
<p style="text-align: center;">A. H. SUNG</p> <p>1 A. She said if you go all the way to trial,</p> <p>2 anyways you lose the money. But what I afraid is</p> <p>3 not losing the money, afraid is I using -- I hire</p> <p>4 illegal employee, people who cannot work in the</p> <p>5 United States.</p> <p>6 Q. Okay.</p> <p>7 A. That's what I afraid. But actually that</p> <p>8 -- now I learn, that really that don't matter</p> <p>9 about it.</p> <p>10 Q. What reasons did the Korean-speaking</p> <p>11 Department of Labor investigator give you of why</p> <p>12 you should settle the case? Did she say there</p> <p>13 was anything --</p> <p>14 A. No because --</p> <p>15 Q. Let me finish. Did she say there was</p> <p>16 anything the matter with your documents?</p> <p>17 A. No. She said -- I told her at the</p> <p>18 beginning I want to go all the way to the trial.</p> <p>19 I won't accept this. And then she said -- In</p> <p>20 that time, another two English-speaking officer</p> <p>21 it was together, but she explained by the Korean</p> <p>22 language. So she told me if you go trial in this</p> <p>23 case, you spend a lot of attorney's fees and</p> <p>24 anyway you lose the money.</p> <p>25</p> <p style="text-align: right;">166</p>	<p style="text-align: center;">A. H. SUNG</p> <p>1 A. At that time, what was the reason they</p> <p>2 keep saying for we don't pay the overtime because</p> <p>3 they say you pay fixed rate every week.</p> <p>4 Q. Yes.</p> <p>5 A. That means you don't pay overtime. But</p> <p>6 I explain her because we got the same hours, same</p> <p>7 amount of work hours every week, that's why it's</p> <p>8 the same. But second case of judges, he</p> <p>9 understand it, you know. He understand why we</p> <p>10 pay fixed rate for every week.</p> <p>11 Q. So the payment reports that you had</p> <p>12 submitted --</p> <p>13 A. Even after this case, we got some</p> <p>14 conference, like conference, like seminar from</p> <p>15 the Labor Department about how we can pay for the</p> <p>16 payroll and then they said even if we pay some</p> <p>17 round-up amount -- like lot of case we pay the</p> <p>18 round-up.</p> <p>19 Q. A round-up?</p> <p>20 A. A round-up. So means we pay more. In</p> <p>21 the first case they make issues for why you pay</p> <p>22 the round-up.</p> <p>23 Q. Okay.</p> <p>24 A. But in the seminar when we went there</p> <p>25</p> <p style="text-align: right;">168</p>

<p>1 A. H. SUNG</p> <p>2 after about three years later, they said round-up</p> <p>3 is not a problem. If you pay more, it's not a</p> <p>4 problem, they said in the Labor Department. But</p> <p>5 in 2010 -- '14, even if you pay fixed rate, it's</p> <p>6 okay.</p> <p>7 Q. So is what you're telling me that you</p> <p>8 attended this seminar that you're referencing?</p> <p>9 A. Yeah.</p> <p>10 Q. Is this something that you were invited</p> <p>11 to by the New York State Department of Labor?</p> <p>12 A. Yeah, they send us a letter, you know.</p> <p>13 Q. Who attended the seminar?</p> <p>14 A. Manager, the Jhong Lee I told you.</p> <p>15 Q. At 32nd Street, the 32nd Street manager?</p> <p>16 A. Yeah.</p> <p>17 Q. Was he the only person who attended the</p> <p>18 seminar?</p> <p>19 A. Yeah.</p> <p>20 Q. You did not attend?</p> <p>21 A. No.</p> <p>22 Q. Did your wife attend?</p> <p>23 A. No because he speak very well, English</p> <p>24 very well and he understood English very well.</p> <p>25 He is second generation immigrant.</p> <p style="text-align: right;">169</p>	<p>1 A. H. SUNG</p> <p>2 Q. Is that what you see as well?</p> <p>3 A. Yeah.</p> <p>4 Q. Is it correct to say that this is a</p> <p>5 depiction of how much was paid to employees on a</p> <p>6 weekly basis and how many hours they worked per</p> <p>7 day?</p> <p>8 A. Yeah.</p> <p>9 Q. It looks like this document also</p> <p>10 includes in the fourth column under the heading,</p> <p>11 "Wage," would it be correct to say that that's</p> <p>12 the hourly rates for the employees?</p> <p>13 A. This wage area is per hour wage rate.</p> <p>14 Q. So that's the hourly rate; is that</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. Then the second column is the amount of</p> <p>18 hours worked that week?</p> <p>19 A. Yes, I think so.</p> <p>20 Q. Then the following column under the</p> <p>21 heading, "Salaries," the actual amount paid out</p> <p>22 to the employees at the end of the week?</p> <p>23 A. That's correct, yeah.</p> <p>24 Q. In looking at this document, do you have</p> <p>25 any reason to believe that any of this</p> <p style="text-align: right;">171</p>
<p>1 A. H. SUNG</p> <p>2 Q. Did any representative from the Third</p> <p>3 Avenue location attend the seminar?</p> <p>4 A. No.</p> <p>5 Q. After the investigation in 2007 and 2008</p> <p>6 -- did the investigation in 2007 and 2008 impact</p> <p>7 how you ran the Silo Cafe at Third Avenue? Did</p> <p>8 you make any changes?</p> <p>9 A. The changes is paperwork is very</p> <p>10 important. I keep telling the manager keep the</p> <p>11 old record, you know.</p> <p>12 Q. So let's look at this document again</p> <p>13 what's been described as Plaintiff's Exhibit 1.</p> <p>14 Let's look at the first page. So again, the</p> <p>15 first page of Plaintiff's Exhibit 1 is D001388;</p> <p>16 is that right? Do you see the number at the</p> <p>17 bottom?</p> <p>18 A. I didn't see a number.</p> <p>19 Q. I'm just referencing that number there.</p> <p>20 (Indicating)</p> <p>21 A. Oh, I didn't see it.</p> <p>22 Q. So my understanding, looking at this</p> <p>23 document, is that this looks like a document from</p> <p>24 the period April 27th to May 1, 2015?</p> <p>25 A. Uh-huh.</p> <p style="text-align: right;">170</p>	<p>1 A. H. SUNG</p> <p>2 information is not correct, is inaccurate?</p> <p>3 A. I believe because I found some the</p> <p>4 Minchul's mistake, he didn't update for the wage</p> <p>5 rate, you know.</p> <p>6 Q. What mistake are you referencing?</p> <p>7 A. That Minchul, when he raised the</p> <p>8 employee's hourly rate, he didn't change it in</p> <p>9 this form for wage.</p> <p>10 Q. Okay.</p> <p>11 A. But he just put total wage is correct,</p> <p>12 you know. But I only saw the total amount, how</p> <p>13 much he paying for the by the weekly only. But</p> <p>14 sometimes he just he has a different -- he</p> <p>15 thought this document it shows everything. So</p> <p>16 means he didn't update this wage rate.</p> <p>17 Q. So what you're telling me is this</p> <p>18 document, this looks like a weekly report of</p> <p>19 wages paid and hours worked?</p> <p>20 A. Right.</p> <p>21 Q. That this document may not include</p> <p>22 accurate information about the hourly rate of</p> <p>23 employees?</p> <p>24 A. Maybe sometimes because he didn't -- he</p> <p>25 didn't changed this, but the correct amount is --</p> <p style="text-align: right;">172</p>

<p>1 A. H. SUNG</p> <p>2 amount is correct.</p> <p>3 Q. I think you mentioned earlier that you</p> <p>4 believe the payment report would reflect the</p> <p>5 actual accurate --</p> <p>6 A. Because the last --</p> <p>7 Q. Let me just finish. So the payment</p> <p>8 report would accurately reflect the hourly rate</p> <p>9 and the amount of hours worked; is that right?</p> <p>10 A. No, total amount is same amount over the</p> <p>11 weekly wage what he paying.</p> <p>12 Q. But my question is in the payment</p> <p>13 reports would that document include the correct</p> <p>14 information of what a worker's hourly rate is?</p> <p>15 A. Maybe, that's -- yeah, that's correct</p> <p>16 because hour is correct because hour is fixed</p> <p>17 hour for every week.</p> <p>18 Q. I understand the amount of hours is</p> <p>19 correct. When I say hourly rate, it means what</p> <p>20 their pay is.</p> <p>21 A. Hourly rate -- because I just know when</p> <p>22 we got in the court, I didn't know before that it</p> <p>23 was a mistake on it. Because when we got the</p> <p>24 hearing for the judges, she point out this is</p> <p>25 wrong then compared to same day with this. So</p> <p style="text-align: right;">173</p>	<p>1 A. H. SUNG</p> <p>2 employee was hired and when there were raises; is</p> <p>3 that right?</p> <p>4 A. Yes.</p> <p>5 Q. The information in the wage notices, is</p> <p>6 that information that was correct?</p> <p>7 A. Yeah, that's correct.</p> <p>8 Q. So if I wanted to look at what the</p> <p>9 accurate hourly rate is for employees, I would</p> <p>10 look at the wage notice?</p> <p>11 A. Yeah.</p> <p>12 Q. Or the payment report?</p> <p>13 A. Yeah.</p> <p>14 Q. Both of those documents should include</p> <p>15 the accurate hourly rate?</p> <p>16 A. Yeah.</p> <p>17 Q. So if we could turn the page, the second</p> <p>18 page of this Plaintiff's Exhibit Number 1, this</p> <p>19 looks like a wage notice, right?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Can you see the section where it has the</p> <p>22 date?</p> <p>23 A. Date?</p> <p>24 Q. I read April 29, 2015, is that the same?</p> <p>25 A. This is date for sign.</p> <p style="text-align: right;">175</p>
<p>1 A. H. SUNG</p> <p>2 that is first time I realized he didn't change</p> <p>3 it, he didn't update this.</p> <p>4 Q. So it looks like what you're telling me</p> <p>5 is this document we're looking at, the first page</p> <p>6 of Plaintiff's Exhibit 1, probably does not</p> <p>7 include accurate information?</p> <p>8 A. I don't know. I don't know which one is</p> <p>9 wrong, which one is right.</p> <p>10 Q. You don't know --</p> <p>11 A. But the paperwork I saw at the front of</p> <p>12 the judges, that was wrong, I saw that. But</p> <p>13 amount of the total payment was correct.</p> <p>14 Q. If I wanted to know how much an employee</p> <p>15 was earning on an hourly basis, what would be the</p> <p>16 correct document for me to look at to determine?</p> <p>17 Would it be the wage notice?</p> <p>18 A. This one. (Indicating)</p> <p>19 Q. So it would be the payment report?</p> <p>20 A. That's correct.</p> <p>21 Q. Earlier, we discussed the wage notices,</p> <p>22 right, and we were looking at the form created by</p> <p>23 the New York State Department of Labor and</p> <p>24 correct me if I'm wrong, but I think you told me</p> <p>25 that you would fill this document out when an</p> <p style="text-align: right;">174</p>	<p>1 A. H. SUNG</p> <p>2 Q. That's the date it was signed. Would it</p> <p>3 be correct to say that this is the wage notice</p> <p>4 for Felix Galindo?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Do you recognize Mr. Kim's signature at</p> <p>7 the bottom there?</p> <p>8 A. Yes.</p> <p>9 Q. What is your understanding of what</p> <p>10 Mr. Galindo's pay rate is according to this wage</p> <p>11 notice?</p> <p>12 A. \$10.13 cents per hour.</p> <p>13 Q. Does this wage rate match the wage rate</p> <p>14 on the first page? And it looks like it's from</p> <p>15 the same period, would you agree?</p> <p>16 A. It's 9.36. It's the same day?</p> <p>17 Q. So the date --</p> <p>18 A. That means he didn't change it.</p> <p>19 Q. Okay.</p> <p>20 A. You know, after he raise his rate.</p> <p>21 Q. Who didn't change it?</p> <p>22 A. Minchul.</p> <p>23 Q. Minchul Kim?</p> <p>24 A. Yeah.</p> <p>25 Q. So which document is accurate?</p> <p style="text-align: right;">176</p>


<p>1 A. H. SUNG</p> <p>2 A. This one, this is accurate. (Indicating)</p> <p>3 Q. The wage notice?</p> <p>4 A. Yeah.</p> <p>5 Q. So let's turn the page. So this is the</p> <p>6 third page and this is a payment report, right?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Is this also Mr. Galindo's payment</p> <p>9 report?</p> <p>10 A. Yes, Felix Galindo, yeah.</p> <p>11 Q. From reading this payment report, what</p> <p>12 was the date range for the payment report?</p> <p>13 A. You mean?</p> <p>14 Q. The dates that this covers.</p> <p>15 A. I think it's April 28, but there's no</p> <p>16 year. I don't know what year is this.</p> <p>17 Q. Okay.</p> <p>18 A. I got to find out from the Minchul.</p> <p>19 Q. What would be the best way to determine</p> <p>20 what year this was?</p> <p>21 A. He got paid 9.75. And here it's '15,</p> <p>22 it's 10.13 and this one is '15. I don't know. I</p> <p>23 got to check that one.</p> <p>24 Q. What do you need to check?</p> <p>25 A. This one is he didn't put the years here</p> <p style="text-align: right;">177</p>	<p>1 A. H. SUNG</p> <p>2 A. Monday to Friday and then we pay</p> <p>3 Wednesday.</p> <p>4 Q. I think it's important for this exercise</p> <p>5 to determine what year we're looking at for this</p> <p>6 payment report, right?</p> <p>7 A. Yeah, yeah.</p> <p>8 Q. And so I brought along some calendars</p> <p>9 that we could look at to maybe identify what pay</p> <p>10 period this was. Just give me a moment so I</p> <p>11 could locate it.</p> <p>12 A. I think if you have --</p> <p>13 THE WITNESS: You have a bunch of this,</p> <p>14 right?</p> <p>15 MR. VARACALLI: (Indicating.)</p> <p>16 A. So if you have a bunch of this, then we</p> <p>17 can calculate what year this is.</p> <p>18 Q. That's exactly what I did.</p> <p>19 MS. BARBOSA: Off the record.</p> <p>20 (Whereupon, a discussion was held off</p> <p>21 the record.)</p> <p>22 MS. BARBOSA: So we're back on the</p> <p>23 record.</p> <p>24 A. 2014.</p> <p>25 Q. You believe that the payment report is</p> <p style="text-align: right;">179</p>
<p>1 A. H. SUNG</p> <p>2 so I got to check what year he paying 9.75.</p> <p>3 Q. Would you be surprised to know that most</p> <p>4 of the payment reports do not contain the year?</p> <p>5 A. That's why I -- Minchul did a lot of</p> <p>6 mistakes for this one. But I think this is</p> <p>7 accurate because he signed it, each employee</p> <p>8 signed when he received the payroll. They know</p> <p>9 how much they paid and then they signed it. But</p> <p>10 this one, it's just for inside record. I just</p> <p>11 want to check for how much total payroll.</p> <p>12 Q. Okay.</p> <p>13 A. It's not have to be exact in the cents</p> <p>14 and exact in the matching. I just want to know</p> <p>15 lump sum numbers, you know.</p> <p>16 Q. I'm just going to direct your attention</p> <p>17 again to the payment report, okay? So the first</p> <p>18 column, it looks like it's the time period for</p> <p>19 the payment report, right?</p> <p>20 A. Uh-huh.</p> <p>21 Q. In this particular document, it's April</p> <p>22 28th to May 2nd; is that your reading as well?</p> <p>23 A. Yeah.</p> <p>24 Q. What is the pay period? What day of the</p> <p>25 week does the pay period usually begin?</p> <p style="text-align: right;">178</p>	<p>1 A. H. SUNG</p> <p>2 for 2014?</p> <p>3 A. Yeah.</p> <p>4 Q. How did you figure that out?</p> <p>5 A. The period of the payment is Monday to</p> <p>6 Friday every week.</p> <p>7 Q. Okay.</p> <p>8 A. So if I look at the calendar --</p> <p>9 Q. Actually, why don't we make this easier.</p> <p>10 I printed out a Google calendar for the years</p> <p>11 2011 to 2015.</p> <p>12 MS. BARBOSA: We can enter this as an</p> <p>13 exhibit so we're making sure we're both</p> <p>14 looking at the same calendars. We'll mark</p> <p>15 this as Plaintiff's Exhibit 4.</p> <p>16 Q. So why don't you reference -- just so</p> <p>17 we're looking at the same calendar, why don't you</p> <p>18 you reference this one and I'll look at this one?</p> <p>19 (Whereupon, calendars were marked</p> <p>20 Plaintiff's Exhibit 4 for identification, as</p> <p>21 of this date.)</p> <p>22 A. Look at April.</p> <p>23 Q. Okay. We're looking at April of 2014,</p> <p>24 right?</p> <p>25 A. Yes.</p> <p style="text-align: right;">180</p>

<p>1 A. H. SUNG</p> <p>2 Q. So April of 2014, so the 28th falls on a</p> <p>3 Monday, right?</p> <p>4 A. Yes.</p> <p>5 Q. So that's why you believe this payment</p> <p>6 report is from 2014?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay, got it. So let's turn the page.</p> <p>9 A. Next page is next week.</p> <p>10 Q. Is the following week?</p> <p>11 A. Yeah, following week.</p> <p>12 Q. So I'm reading the following week of May</p> <p>13 5th through May 9th?</p> <p>14 A. That's correct.</p> <p>15 Q. Got it. So that May 5th falls on a</p> <p>16 Monday?</p> <p>17 A. That's correct.</p> <p>18 Q. So for those reasons you believe the</p> <p>19 payment reports attached to Plaintiff's Exhibit</p> <p>20 Number 1 is from 2014?</p> <p>21 A. Yes.</p> <p>22 Q. Got it. So we've looked at three</p> <p>23 categories of documents in this exhibit, right?</p> <p>24 The first page being kind of the weekly salary</p> <p>25 and the weekly hours, the second page being the</p> <p style="text-align: right;">181</p>	<p>1 A. H. SUNG</p> <p>2 over --</p> <p>3 A. I saw the envelope when he prepare,</p> <p>4 because sometimes when I visit the store and I</p> <p>5 open his drawer he already prepared the payroll</p> <p>6 with the cash for small envelope.</p> <p>7 Q. Okay. So an envelope was prepared for</p> <p>8 each employee who's given cash?</p> <p>9 A. The name and the total amount.</p> <p>10 Q. And the total amount?</p> <p>11 A. And then this paper is attached.</p> <p>12 Q. From what you observed or, you know,</p> <p>13 what you reviewed, would the amounts written on</p> <p>14 the envelope match the amounts written on the</p> <p>15 payment reports?</p> <p>16 A. Yeah.</p> <p>17 Q. Do you recall whether the envelopes ever</p> <p>18 had any loose change in them or was it only just</p> <p>19 dollar bills?</p> <p>20 A. That I don't remember really.</p> <p>21 Q. Was it always the case that you or</p> <p>22 Minchul Kim would round up for weekly salaries?</p> <p>23 A. Yeah, I think like 499.68.</p> <p>24 Q. So what would you do in that instance?</p> <p>25 A. \$500.</p> <p style="text-align: right;">183</p>
<p>1 A. H. SUNG</p> <p>2 wage notice, and the third and fourth pages being</p> <p>3 examples of the payment reports.</p> <p>4 A. Correct.</p> <p>5 Q. I understand that it's your testimony</p> <p>6 that we should really not look at this weekly</p> <p>7 schedule, but that we should instead be looking</p> <p>8 at the payment reports to see the accurate hourly</p> <p>9 rates and weekly sums paid to the workers?</p> <p>10 A. Yes.</p> <p>11 Q. Were you ever present during pay days at</p> <p>12 Silo Cafe?</p> <p>13 A. No.</p> <p>14 Q. I think you said that employees were</p> <p>15 typically paid on Wednesday or Friday?</p> <p>16 A. Wednesday, Friday.</p> <p>17 Q. You were never present when Minchul Kim</p> <p>18 distributed pay to you workers?</p> <p>19 A. I don't remember. Most of time, I'm not</p> <p>20 there.</p> <p>21 Q. It sounds like a lot of the workers at</p> <p>22 Silo Cafe are paid off the books in cash, right?</p> <p>23 A. Yeah.</p> <p>24 Q. Do you know whether Minchul Kim deposits</p> <p>25 the money in any type of envelope or does he hand</p> <p style="text-align: right;">182</p>	<p>1 A. H. SUNG</p> <p>2 Q. \$500, okay.</p> <p>3 A. Labor Department said that's okay.</p> <p>4 Q. That's okay?</p> <p>5 A. Yeah, they said that's okay.</p> <p>6 Q. You would ask the employee to sign for</p> <p>7 the 499?</p> <p>8 A. Yeah.</p> <p>9 Q. We'll put aside Plaintiff's Exhibit 1</p> <p>10 for now. Let's see. So I think you had</p> <p>11 mentioned earlier that Esteban Perez was hired by</p> <p>12 Minchul Kim; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall when he was hired?</p> <p>15 A. I don't remember, but long time ago.</p> <p>16 Q. A long time ago?</p> <p>17 A. Must beginning of Minchul hired.</p> <p>18 Q. Excuse me?</p> <p>19 A. I think it's the same year when Minchul</p> <p>20 started working.</p> <p>21 Q. Okay. Do you recall what Mr. Perez's</p> <p>22 duty was or his position was at the cafe?</p> <p>23 A. Who? Esteban?</p> <p>24 Q. Esteban Perez, yes.</p> <p>25 A. He was a deli man. He made the</p> <p style="text-align: right;">184</p>

<p>1 A. H. SUNG</p> <p>2 sandwich.</p> <p>3 Q. He made the sandwiches, and were his</p> <p>4 hours the same as the other employees who did</p> <p>5 similar work?</p> <p>6 A. I don't know, but maybe whatever he said</p> <p>7 here, you know, that's his hour.</p> <p>8 Q. Do you recall being advised by Mr. Kim</p> <p>9 of Mr. Perez ever receiving a raise?</p> <p>10 A. Yeah.</p> <p>11 Q. If you had to estimate, how many times</p> <p>12 would you say Mr. Perez was given a raise?</p> <p>13 A. I think couple times, couple times.</p> <p>14 Q. Were there any particular times of the</p> <p>15 year that you would give raises?</p> <p>16 A. No, there's no particular time.</p> <p>17 Q. Okay.</p> <p>18 A. Yeah.</p> <p>19 Q. As you may know, the labor -- the</p> <p>20 minimum wage, the state minimum wage has</p> <p>21 increased in the last few years on a yearly</p> <p>22 basis. Do you recall modifying his hourly rates</p> <p>23 during those periods?</p> <p>24 A. Yes, we do.</p> <p>25 Q. When Mr. Perez was hired, are you</p>	<p>1 A. H. SUNG</p> <p>2 Esteban the taxes. So</p> <p>3 that happening I remember. Maybe that was</p> <p>4 Esteban.</p> <p>5 Q. But do you recall having conversations</p> <p>6 with Mr. Kim at all about how Mr. Perez was as an</p> <p>7 employee?</p> <p>8 A. Minchul said he's a good worker, you</p> <p>9 know, and that he wants to raise his, you know,</p> <p>10 pay -- the wage. So I said okay.</p> <p>11 Q. Did you ever observe anything or ever</p> <p>12 heard anything from Minchul Kim that would make</p> <p>13 you think that Esteban Perez was a dishonest</p> <p>14 person?</p> <p>15 A. No.</p> <p>16 Q. Delfino Lopez was somebody who was hired</p> <p>17 by the first manager?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall what Delfino's role was at</p> <p>20 the cafe?</p> <p>21 A. I think, he before 12 o'clock, he work</p> <p>22 for helper at the kitchen. And then after 12</p> <p>23 o'clock, we have a business starting actually for</p> <p>24 lunch, lunch guests coming and he helped with the</p> <p>25 sandwich unit. So he work at the kitchen and</p>
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<p>1 A. H. SUNG</p> <p>2 confident that he was given a wage notice?</p> <p>3 A. Yeah.</p> <p>4 Q. That wage notice would have included his</p> <p>5 correct hourly rate?</p> <p>6 A. That's correct.</p> <p>7 Q. Are you aware of whether Mr. Perez's</p> <p>8 role at Silo Cafe ever changed?</p> <p>9 A. Mr. Perez was Delfino Perez?</p> <p>10 Q. Esteban.</p> <p>11 A. Oh, Esteban. Esteban was a deli man.</p> <p>12 He made sandwiches.</p> <p>13 Q. I guess my questions is was he always a</p> <p>14 deli man, or did he ever do something else?</p> <p>15 A. Always same position, yeah.</p> <p>16 Q. Do you recall ever speaking with</p> <p>17 Mr. Minchul Kim about Esteban Perez causing any</p> <p>18 types of problems for the business?</p> <p>19 A. No. What I heard only he want to pay</p> <p>20 the taxes.</p> <p>21 Q. He wants to pay --</p> <p>22 A. He wants pay the payroll tax. So I</p> <p>23 think we -- he only paid one time the payroll tax</p> <p>24 and the second time, he changed his mind, he</p> <p>25 don't want to pay the taxes. I was told he</p>	<p>1 A. H. SUNG</p> <p>2 outside in the sandwich. That's what I remember.</p> <p>3 Q. Are you confident that the previous</p> <p>4 manager filled out a wage notice for Mr. Lopez?</p> <p>5 A. I think so, yeah.</p> <p>6 Q. And any time Mr. Lopez would have</p> <p>7 received a raise?</p> <p>8 A. Yeah, he raise it also.</p> <p>9 Q. Does anything stand out to you about</p> <p>10 Mr. Lopez? What was your understanding of how he</p> <p>11 was as a worker?</p> <p>12 A. He was very calm guy.</p> <p>13 Q. Okay.</p> <p>14 A. You know, was okay. So I really want to</p> <p>15 raise their wages, Esteban and Delfino.</p> <p>16 Q. Say that again?</p> <p>17 A. I really want raise their hourly rate.</p> <p>18 Q. Oh, okay, you wanted to raise their</p> <p>19 hourly rate.</p> <p>20 A. But the company didn't make money so</p> <p>21 that's why we couldn't, you know, raise.</p> <p>22 Q. So you were happy with their performance</p> <p>23 as employees?</p> <p>24 A. Oh, yeah.</p> <p>25 Q. Did you ever observe anything of</p>
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<p>1 A. H. SUNG</p> <p>2 Mr. Lopez or were you ever told anything by</p> <p>3 Mr. Kim or anyone else about Mr. Lopez that would</p> <p>4 make you think that he's an untruthful person?</p> <p>5 A. No.</p> <p>6 Q. Mr. Galindo was also hired by the</p> <p>7 previous manager?</p> <p>8 A. No, he was working at Silo Cafe 32nd</p> <p>9 Street first.</p> <p>10 Q. Oh, okay.</p> <p>11 A. And then he has a problem and I moved</p> <p>12 him.</p> <p>13 Q. How long did he work at the 32nd Street</p> <p>14 location?</p> <p>15 A. That is about two years.</p> <p>16 Q. He worked there for two years?</p> <p>17 A. Yeah, at the beginning and until he</p> <p>18 moved to the, you know, 50 Street.</p> <p>19 Q. Did he start working at the 32nd Street</p> <p>20 location when the cafe opened at the 32nd Street?</p> <p>21 A. Yeah.</p> <p>22 Q. So he had been there for a while?</p> <p>23 A. Yes.</p> <p>24 Q. What was his role at the 32nd Street</p> <p>25 location?</p> <p style="text-align: right;">189</p>	<p>1 A. H. SUNG</p> <p>2 received raises during the course of his</p> <p>3 employment at Silo Cafe?</p> <p>4 A. Yeah, many times.</p> <p>5 Q. And your confident that wage notices</p> <p>6 were completed each time a raise was --</p> <p>7 A. Yeah, I think so, yeah.</p> <p>8 Q. Why are you confident that this was</p> <p>9 done?</p> <p>10 A. Because I already instructed each</p> <p>11 manager. But they know what paper have to be</p> <p>12 prepared.</p> <p>13 Q. Are you aware of what wage notices were</p> <p>14 produced in response to Plaintiff's Request for</p> <p>15 documents?</p> <p>16 A. I think it's LS54, that form.</p> <p>17 Q. Excuse me?</p> <p>18 A. This form. (Indicating)</p> <p>19 Q. Oh, this form. I guess are you aware of</p> <p>20 what years were produced.</p> <p>21 A. Oh, what year. I don't remember that.</p> <p>22 Q. Would you be surprised if I told you</p> <p>23 that wage notices were only produced for the year</p> <p>24 2015?</p> <p>25 A. I don't know. I don't know.</p> <p style="text-align: right;">191</p>
<p>1 A. H. SUNG</p> <p>2 A. He was a deli man also.</p> <p>3 Q. Do you recall more or less in what year</p> <p>4 you moved him to the Third Avenue location?</p> <p>5 A. I think very beginning. Just like</p> <p>6 before the Minchul came to -- as a manager. So</p> <p>7 2008, probably about September, I believe.</p> <p>8 Q. Besides the problem that you described</p> <p>9 with Mr. Galindo at the 32nd Street location, was</p> <p>10 there any other reason why you moved him to the</p> <p>11 Third Avenue location?</p> <p>12 A. No, that's the only reason because</p> <p>13 that's very bad. Because the girl who work as a</p> <p>14 cashier, she doesn't want to work with him.</p> <p>15 Q. Okay.</p> <p>16 A. Otherwise, she want to leave. So I want</p> <p>17 to move him to other new store. So I noticed him</p> <p>18 because we still have a mark in the bathroom.</p> <p>19 Q. Are you confident that when Mr. Galindo</p> <p>20 was hired by the Silo Cafe at 32nd Street that</p> <p>21 you filled out a notice for him --</p> <p>22 A. I don't know. That is very beginning,</p> <p>23 hired by the first manager at Silo Cafe at 32nd</p> <p>24 Street. I don't remember, you know, what he did.</p> <p>25 Q. Do you recall whether Mr. Galindo</p> <p style="text-align: right;">190</p>	<p>1 A. H. SUNG</p> <p>2 Q. You don't know?</p> <p>3 A. Yeah.</p> <p>4 Q. Any wage notices we don't have, the</p> <p>5 reason we wouldn't have them is because they were</p> <p>6 lost in the flood?</p> <p>7 A. I think so. That was just guessing</p> <p>8 actually. Because there's no paper because we</p> <p>9 had it, but it's not in the space now.</p> <p>10 Q. When the 32nd Street location was</p> <p>11 investigated by the New York State Department of</p> <p>12 Labor, you indicated that you submitted payment</p> <p>13 reports to them?</p> <p>14 A. Yes.</p> <p>15 Q. The same payment reports that you have</p> <p>16 kept at 805 Third Avenue?</p> <p>17 A. Yes.</p> <p>18 Q. Did you also submit to the Department of</p> <p>19 Labor wage notices?</p> <p>20 A. Yeah.</p> <p>21 Q. So it was your practice also at 32nd</p> <p>22 Street to keep wage notices when employees were</p> <p>23 hired and when employees received raises?</p> <p>24 A. Yes.</p> <p>25 Q. So even though you had those payment</p> <p style="text-align: right;">192</p>

<p>1 A. H. SUNG</p> <p>2 reports and wage notices, you still decided to</p> <p>3 settle the case?</p> <p>4 A. Because they keep saying we round up the</p> <p>5 number. They say when you round the number up,</p> <p>6 that means you don't pay the overtime. They keep</p> <p>7 telling(sic) me, but I say it's wrong. That's</p> <p>8 why I want to go all the way to the trial.</p> <p>9 Q. Okay.</p> <p>10 A. Okay. But the reason I told you, the</p> <p>11 reason I made a settle b[REDACTED]</p> <p>12 [REDACTED] That I broke the law also, you know.</p> <p>13 Q. So you, at that time, you were</p> <p>14 uncomfortable with the idea that you had employed</p> <p>15 [REDACTED] --</p> <p>16 A. That's right.</p> <p>17 Q. -- at 32nd Street?</p> <p>18 A. That's the only reason I settled. Once</p> <p>19 this one goes to court, people knows I hired</p> <p>20 [REDACTED] That's what I afraid of.</p> <p>21 Q. Besides the investigations that we've</p> <p>22 been speaking about at 32nd Street, have any of</p> <p>23 your other businesses ever been investigated --</p> <p>24 A. No.</p> <p>25 Q. -- by any other government entity?</p> <p style="text-align: right;">193</p>	<p>1 A. H. SUNG</p> <p>2 MS. BARBOSA: Okay. I'm just going to</p> <p>3 go off the record just for five minutes.</p> <p>4 (Whereupon, a discussion was held off</p> <p>5 the record.)</p> <p>6 Q. So I've reviewed my notes and reviewed</p> <p>7 the documents. I don't have any further</p> <p>8 questions. I don't know if there's anything</p> <p>9 additional that you would like to share with me</p> <p>10 while we're on the record?</p> <p>11 A. Off the record, with the record, it</p> <p>12 doesn't matter to me. The fact is I paid</p> <p>13 overtime. I don't want to settle because I don't</p> <p>14 agree I'm not paying the overtime. I don't break</p> <p>15 the rules, okay. They lying to you.</p> <p>16 So think about it. Felix still working</p> <p>17 in my store. If we paid -- we not paying</p> <p>18 overtime, he paying less money than five years</p> <p>19 ago, okay. So I like those three guys, but I</p> <p>20 know why they do this way because they like money.</p> <p>21 I understand, I like money too.</p> <p>22 But if they wants money, just \$5,000,</p> <p>23 whatever, I can pay. But if they say you don't</p> <p>24 paid overtime, give me money, I don't even pay</p> <p>25 one dollar. Even If I pay hundred thousand</p> <p style="text-align: right;">195</p>
<p>1 A. H. SUNG</p> <p>2 A. No.</p> <p>3 Q. Not by the Department of Labor?</p> <p>4 A. No.</p> <p>5 Q. Not by any other government agency?</p> <p>6 A. No, nothing.</p> <p>7 Q. Do employees at Silo Cafe receive sick</p> <p>8 days?</p> <p>9 A. Uh-huh.</p> <p>10 Q. When did you receive -- have they always</p> <p>11 received sick days or is that something that was</p> <p>12 implemented --</p> <p>13 A. No, when they ask. So the by law, we</p> <p>14 got to give 40 hours paid sick days.</p> <p>15 Q. Okay.</p> <p>16 A. So we follow the law.</p> <p>17 Q. Do you use any documents or any</p> <p>18 documents --</p> <p>19 A. We have record. Each manager has a</p> <p>20 record.</p> <p>21 Q. So they record when an employee is</p> <p>22 taking off time off --</p> <p>23 A. Yeah.</p> <p>24 Q. -- for a sick day?</p> <p>25 A. Right.</p> <p style="text-align: right;">194</p>	<p>1 A. H. SUNG</p> <p>2 dollars legal fee, okay. Because once I agree,</p> <p>3 once I settle, my reputation is means, you know,</p> <p>4 I don't paid overtime. I don't want to be a bad</p> <p>5 guy. That's the whole thing.</p> <p>6 Q. How would you describe your reputation</p> <p>7 right now?</p> <p>8 A. My reputation, I'm a good guy, good</p> <p>9 employer.</p> <p>10 Q. Okay.</p> <p>11 A. All the employees like me, they wants</p> <p>12 work with me, okay. I really care this guys</p> <p>13 generously. I always paid the bonus in the</p> <p>14 holidays season, you know, but this is not</p> <p>15 right.</p> <p>16 Q. Okay.</p> <p>17 A. That's all I want to say.</p> <p>18 MS. BARBOSA: Okay. Well, I appreciate</p> <p>19 you being here today.</p> <p>20 (Continued on the following page.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">196</p>

<p>1 A. H. SUNG</p> <p>2 MR. VARACALLI: Defendants reserve the</p> <p>3 right to review the transcript and make</p> <p>4 corrections if necessary.</p> <p>5 MS. BARBOSA: Okay. Very good. Thank</p> <p>6 you so much.</p> <p>7 (Whereupon, the examination of this</p> <p>8 witness was concluded at 1:55 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">197</p>	<p>1 INDEX</p> <p>2</p> <p>3</p> <p>4</p> <p>5 EXAMINATION OF BY PAGES</p> <p>6 Andrew H. Sung Ms. Barbosa 4-197</p> <p>7</p> <p>8</p> <p>9 EXHIBITS</p> <p>10</p> <p>11 PLAINTIFF'S DESCRIPTION PAGE</p> <p>12 1 Document marked D001388 47</p> <p>13</p> <p>14 2 Package of documents</p> <p>15 entitled Recording</p> <p>16 3 Working Hours By Employer 104</p> <p>17 Plaintiff's Request For</p> <p>18 Documents 114</p> <p>19</p> <p>20 4 Calendars 180</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">199</p>
<p>1</p> <p>2 ACKNOWLEDGMENT</p> <p>3</p> <p>4 STATE OF NEW YORK)</p> <p>5) ss.:</p> <p>6 COUNTY OF)</p> <p>7 I, Andrew H. Sung, hereby certify</p> <p>8 that I have read the transcript of my testimony</p> <p>9 taken under oath in my deposition of May 29,</p> <p>10 2018; that the transcript is a true, complete</p> <p>11 and correct record of what was asked, answered</p> <p>12 and said during this deposition, and that the</p> <p>13 answers on the record as given by me are true</p> <p>14 and correct.</p> <p>15</p> <p>16</p> <p>17</p> <p>18 ANDREW H. SUNG</p> <p>19 Subscribed and sworn to</p> <p>20 before me this _____ day</p> <p>21 of _____, 2018.</p> <p>22</p> <p>23</p> <p>24 NOTARY PUBLIC</p> <p>25</p> <p style="text-align: right;">198</p>	<p>1</p> <p>2 CERTIFICATION</p> <p>3</p> <p>4</p> <p>5 I, CHAYA EZAGUI, a Notary Public of the</p> <p>6 State of New York do hereby certify:</p> <p>7 That the testimony in the within</p> <p>8 proceeding was held before me at the aforesaid</p> <p>9 time and place.</p> <p>10 That said witness was duly sworn before</p> <p>11 the commencement of the testimony, and that the</p> <p>12 testimony was taken stenographically by me, then</p> <p>13 transcribed under my supervisor, and that the</p> <p>14 within transcript is a true record of the</p> <p>15 testimony of said witness.</p> <p>16 I further certify that I am not related</p> <p>17 to any of the parties to this action by blood or</p> <p>18 marriage, that I am not interested directly or</p> <p>19 indirectly in the matter in controversy, nor am I</p> <p>20 in the employ of any of the counsel.</p> <p>21 IN WITNESS WHEREOF, I have hereunto set</p> <p>22 my hand this 11th day of June, 2018.</p> <p>23</p> <p>24  CHAYUA EZAGUI</p> <p>25</p> <p style="text-align: right;">200</p>